

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

United States Court of Appeals
for the District of Columbia Circuit

FILED DEC 27 1968

Nathan J. Paulson
CLERK

632

APPENDIX

IN THE

UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

NO. 22,279

7 copies
MARIA T. PARDO

APPELLANT

VS

WILSON LINE OF WASHINGTON, INC.
ET AL.

APPELLEES

HENRY H. BRYLAWSKI
224 East Capitol Street
Washington, D. C.

Counsel for Appellant

JOINT APPENDIX

Page nos. listed below
appear in red ink on
copies.

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DOCKET ENTRIES

<u>Date</u>	<u>Proceedings</u>
1966	
Jan. 27	Complaint, appearance, Exhibit
Jan. 27	Summons, copies (2) and copies (2) of Complaint issued 1 M.F. 2/14/66; #2 Ser 2/4
Feb. 25	Answer of deft #1 to complaint; jury demand; c/m 2/23/66; appearance of Ernest F. Henry
Feb. 25	Notice by deft #1 to take deposition of pltf; c/m 2/23/66
Feb. 28	Opposition of deft #1 to motion relating to deposition; P&A; c/m 2/28/66
Feb. 28	Motion of pltf to suppress notice to take deposition or in the alternative to require deposition to be taken in New York, or by written interrogatories; P&A; c/m 2/26/66; MC 2/28/66
Mar. 14	Withdrawal by pltf of motion to suppress deposition.
Apr. 25	Summons, copy and copy of complaint issued deft #2. #2 ser 5/9/66
June 13	Answer of deft #2 to complaint; c/m 5/31/66; jury demand; Appearance of Ernest F. Henry.
June 13	Calendared (AC/M) (M)
Aug. 17	Certificate of readiness, 7/19/66
Aug. 28	Order granting defts leave to file written interrogatories; giving defts reasonable time to answer (N)
Aug. 29	Interrogatories of defts to pltf; c/m 8/24
Oct. 12	Answers of plaintt to interrogatories of defts; c/m 10-11-67
1968	
Feb. 16	Order to show Cause why case should not be dismissed returnable February 26, 1968 at 9:45 A.M. (N)
Mar. 7	Pretrial proceedings
Mar. 8	Objections of defts to Pretrial Order; c/m 3-8-68
Mar. 18	Memorandum of pltf in support of pretrial examiner's order c/m 3-15 exhibit
Mar. 19	Points and Authorities of defts in support of objections to pretrial order; c/m 3-19.
Mar. 26	Motion of defts. for summary judgment; statement; exhibits 4A thru 4D; affidavit; P&A; c/m 3-26
Mar. 26	Order overruling deft's objection to Pretrial Examiner's Order dated 3-6-68. (n)
Apr. 1	Memorandum of pltf. re defts' motion for summary judgment; c/m 3-28-68
Apr. 1	Affidavit of Howard F. Noonan
May 24	Opposition of pltf. to defts.' motion for summary judgment; c/m 5-24; exhibits A thru D.
Jun. 3	Order denying motion of defts. for summary judgment. (M)
Jun. 6	Motion of defts. for specification of facts; P&A; c/m 6-6; M.C.
Jun. 14	Opposition of pltf. to motion for specification of facts; c/m 6-14
Jun. 14	Order denying defts' motion for an order specifying the facts in issue pursuant to Rule 56(d) (N)
Jun. 25	Withdrawal by deft. of demand for trial by jury
Jun. 25	Trial begun; finding for the deft. (deft. to present findings of fa and order) (Rep.: G. Horning)
Jul. 8	Findings of Fact and Conclusions of Law finding for defts. (N) McGarragh, J.
Jul. 8	Judgment dismissing complaint with prejudice; denying money judgme filed in Queens County Branch of the Supreme Court of the State of New York #i3174/1962 and entering judgment in favor of the defts. against pltf. Marion T. Pardo (N) McGarragh, J.
Aug. 6	Notice of appeal of pltf. from judgment of 7-8; deposit by Brylawski \$5.00 (copy mailed to Ernest Henry)
Aug. 6	Cost bond on appeal of pltf. in amount of \$250.00 with Travelers Indemnity Co. approved
Aug. 19	Exhibits 1 thru 7 of defts; copy of letter re exhibit.
Aug. 23	Exhibits 1,2,3 of pltf.
Aug. 26	Partial transcript of testimony of Joseph D. Goldstein (6-25-68) pp. 1-44 (Reporter: Gloria H. Horning).

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

MARIA T. PARDO
c/o John Windsor
123-40 83rd Ave.
Kew Gardens, New York

Plaintiff

vs

WILSON LINE OF WASHINGTON, INC.
Serve: Corp. agent- Ernest F. Henry
923 20th St., N.W.
Washington, D.C.

Civil Action

No. 211-66

Filed 1/27/66

and

JOSEPH I. GOLDSTEIN
c/o Wilson Line of Washington, Inc.
Rhine Ave. and M St., S.W.
Washington, D.C.

Defendants

COMPLAINT ON FOREIGN JUDGMENT

1. Jurisdiction of the Court is founded on the amount involved.
2. On January 14, 1965 in the Supreme Court for the State of New York in the County of Queens, case numbered 13174/1962, plaintiff obtained judgment against defendant Wilson Line of Washington, Inc., a Maryland corporation, and defendant Joseph I. Goldstein, individually, and other defendants not located in the District of Columbia, in the sum of \$15,221.10 with interest thereon in the sum of \$1750.35 together with costs of \$77.75 making in all a total of \$17,049.20. An exemplified copy of said judgment under triple seal and certificate is attached hereto as Exhibit "A".
3. No part of the said judgment presently in full force and effect has been paid by any defendant and the entire amount thereof is due and owing.

- 2 -

WHEREFORE, plaintiff demands judgment against defendants in the amount of \$17,049.20 plus interest from January 14, 1965 and costs.

Henry H. Brylawski

Fulton Brylawski

Attorneys for Plaintiff
224 East Capitol Street
Washington, D. C.
543-2450

QUEENS COUNTY CLERK

88-11 SUTPHIN BOULEVARD

JAMAICA, NEW YORK 11435

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THE PEOPLE OF THE STATE OF NEW YORK,

BY THE GRACE OF GOD FREE AND INDEPENDENT,

To all to whom these Presents may come, GREETING:

KNOW YE, That We, having examined the files and records in the office of the Clerk of the County of Queens, State of New York, and Clerk of the Supreme Court of said State, in and for said County, Do Find a certain record consisting of Order for Money Judgment filed in this office on January 20, 1965 in the matter of

MARIA T. PARDO, also known as MARY PARDO

-against-

WILSON LINE OF NEW YORK INC., et al

remaining there on file in the words and figures following, to wit:

(True Copy attached.)

BEST COPY A
from the original

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AT a Special Term, Part I, of the Supreme Court of the State of New York, held in and for the County of Queens, at the Queens General Court House, 87-11 Sutphin Blvd., Jamaica, New York, on the ~~14~~ day of January, 1965.

PRESENT:

HON. ANTHONY M. LEVORI

Justice

MARIA T. PABDO, also known as MARY PABDO,

Plaintiff,

INDEX # 13174/1962

against

WILSON LINE OF NEW YORK INC
FIVE CABALLEROS INC & ARTHUR FRANQUEZ
WILSON STEAMSHIP CORPORATION
WILSON LINE OF WASHINGTON INC
WILSON LINE OPERATING COMPANY
WILSON LINE INCORPORATED and
JOSEPH I. GOLDSTEIN

COURT
&
JUDGMENT

Defendants

The supplemental summons with notice in the above entitled action having been duly personally served upon the defendants Wilson Steamship Corporation, Wilson Line of Washington, Inc., Wilson Line Operating Company, Wilson Line, Incorporated and Joseph I. Goldstein, on the 8th day of January 1964, pursuant to the order of this Court made and entered on the 7th day of November, 1963, and the time of said defendants to appear, answer or raise an objection thereto or to the amended complaint duly personally served upon said defendants pursuant to said order having expired, and the said defendants not having appeared, answered, or raised an objection thereto in point of law or otherwise;

AND the plaintiff having duly moved this Court for an order directing the entry of judgment in favor of the plaintiff and against the defendants Wilson Steamship Corporation, Wilson Line of Washington, Inc., Wilson Line Operating Company, Wilson Line, Incorporated, and Joseph I. Goldstein for the relief demanded in the amended complaint upon the ground that said defendants have failed to appear herein and are now in default, and for such other relief as may be just, proper and equitable;

AND said motion having duly and regularly come on to be heard
on December 30, 1964;

IT IS, upon reading and filing the notice of motion dated
December 7, 1964, the affidavit of John Winsor, in support of said motion,
sworn to December 7, 1964, the supplemental summons and notice dated November
20, 1963 heretofore served herein, with proof of due service thereon, and
upon the amended complaint duly verified the 5th day of December, 1964, with
proof of due service thereon, and upon the pleadings and proceedings heretofore
had herein, including the order of this Court dated and entered on the 7th day
of November, 1963, and there being no opposition to said motion, and due
deliberation having been had thereon;

IT IS appearing to the satisfaction of the Court that pursuant
to the order of this Court dated January 11, 1963, and entered herein on the
12th day of January, 1963, this Court by Hon. Milton M. Scott did on the 31st
day of January, 1963, duly take proof of and assess plaintiff's damages without
a jury, and found and assessed plaintiff's damages herein at the sum of
Fifteen thousand (\$15,000.00) Dollars for which judgment was entered in favor
of plaintiff and against the defendants Allison Line of New York, Inc. and
Five Castilleco Inc. and Arthur Truncale, the original defendants, no part of
which judgment of \$15,000.00, with costs of \$221.10, has been paid, making
a total sum of \$15,221.10, due and unpaid to plaintiff pursuant to said
assessment of damages sustained by plaintiff, with interest thereon from the
date of entry of said judgment on February 7, 1963, said sum of \$15,221.10
being the amount stated in the said notice served with the supplemental summons
with interest thereon from February 7, 1963 for which judgment would be taken
against said additional defendant named in the amended complaint, with costs
of the action;

NOW, on motion of John Winsor, Esq., attorney for plaintiff,
it is ORDERED, that plaintiff's motion be and the same hereby is in
all respects granted without prejudice to the proceedings heretofore had herein
and it is

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ADJUDGED, that Plaintiff Marie P. Fardo, a/k/a Mary Fardo,
residing at 1207 Park Avenue, New York, N.Y. do recover of the said additional
defendants, Wilson Steamship Corporation, Wilson Line of Washington, Inc.
Wilson Line Operating Company, Wilson Line, Incorporated, and Joseph I.
Goldstein, of Main Avenue and N. Street S.E. Washington, D.C., and each of
said defendants, jointly and severally, in the sum of \$15,000.00, with
interest thereon in the sum of \$1,750.00 from February 7, 1963 to January 7,
1965, together with the sum of \$~~77.35~~ costs as herein, making in all
the sum of \$17,749.35 and that plaintiff have execution therefor; and
it is directed that the Clerk record his docket and records accordingly.

Filed and Recorded January 20, 1965

ENTER,

R.M.L.
3/2/65

WVC

GRANTED
JAN 14 1965
Paul J. Smith
CLERK

Paul Smith, Clerk

JAN. 20, 1965

3.

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All of which we have caused by these Presents to be exemplified, and the Seal of our said Court for said County to be hereunto affixed.

WITNESS, Hon.

A Justice of the Supreme Court of the State of New York presiding at Special Term
in and for the County of Queens, State of New York, the twelfth
day of January , in the year of Our Lord one thousand nine hundred
and sixty-six .

Paul Livotti
County Clerk of Queens County, and Clerk of the
Supreme Court, Queens County.

P.L. , a Justice presiding at a
Special Term of the Supreme Court of the State of New York in and for the County of Queens, do hereby
certify that PAUL LIVOTTI, whose name is subscribed to the preceding exemplification is the Clerk of the County
of Queens and the Clerk of the Supreme Court in and for said County, duly commissioned and sworn, and that
full faith and credit are due to his official acts.

I FURTHER CERTIFY, that the seal affixed to the exemplification is the proper seal of said Court for
said County, and that the attestation thereof is in due form of law and by the proper officer.

WITNESS my hand at the General Courthouse at Jamaica, County of
Queens, State of New York, this 13th day of January
in the year 19 66 .

Paul Livotti
Justice of the Supreme Court of the State of New York.

STATE OF NEW YORK,]
COUNTY OF QUEENS, } ss.:

I, PAUL LIVOTTI, Clerk of the County of Queens and Clerk of the Supreme Court of the State of New
York, in and for the County of Queens, (said Court being a Court of Record) do hereby certify that
Hon. - whose name is
subscribed to the preceding certificate, is a Justice of the Supreme Court of the State of New York, pre-
siding at a Special Term of said Court in and for the County of Queens, duly commissioned and sworn, and
that the signature of said Justice to said Certificate is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said
County and Court, this 13th day of January
in the year 19 66 .

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

JUL 8 1968

MARIA T. PARDO,)
Plaintiff,) ROBERT M. STEARNS, Clerk
v.) Civil Action No. 211-'66
WILSON LINE OF WASHINGTON, INC.)
JOSEPH I. GOLDSTEIN,)
Defendants.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having come on for hearing upon the pleadings, oral testimony, written exhibits and argument of counsel, the court thereupon this 8th day of July, 1968, enters the following:

FINDINGS OF FACT

1. Both defendants in this proceeding, Wilson Line of Washington, Inc. and Joseph I. Goldstein, are non-domiciliaries of the State of New York; neither ever has transacted any business in the State of New York; and neither ever appeared in the cause of action entitled Pardo v. Wilson Line of New York, et al., #13174/1962, filed in the Queens County Branch of the Supreme Court of the State of New York.

2. Neither of the defendants in this proceeding, Wilson Line of Washington, Inc. and Joseph I. Goldstein, committed any of the acts alleged by Plaintiff Pardo in her amended complaint in that New York Court action and which allegations were the sole basis for the New York Court's entry of its money judgment in that action against these defendants.

3. The principal claim of the plaintiff to the effect that these defendants obtained the vessel O.S. Hudson Belle from other defendants in that New York Court action without consideration and thereby committed fraud upon her as a judgment creditor, was not supported by any oral

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or written evidence, but, to the contrary, the defendant, Wilson Line of Washington, Inc., obtained clear title to said vessel in April, 1963, unencumbered by any liens following a U. S. Marshal's sale under order of the United States District Court for the District of Delaware and as consideration for its purchase of such vessel, paid the cash sum of \$180,000. and gave its promissory note for the balance of the purchase price, which obligation was secured by the delivery of preferred ship mortgages in the total amount of \$673,519.94 which mortgages were duly recorded in the U. S. Customs House, Washington, D. C.

CONCLUSIONS OF LAW

1. The money judgment obtained in the Supreme Court of the State of New York against the defendants, Wilson Line of Washington, Inc. and Joseph I. Goldstein, is not entitled to full faith and credit since that court never secured effective jurisdiction over such defendants as required by due process of law.
2. The presumption of regularity of a judgment entered in a foreign jurisdiction applied to this case was effectively overcome by uncontradicted evidence on behalf of the defendants and plaintiff failed to carry her burden of proof, lacking such presumption.
3. The said money judgment is null and void and defendants are entitled to a finding and judgment to that effect.

Joseph McGarragh
Judge.

Seen:

Henry H. Brylawski,
Attorney for Plaintiff,-
Maria T. Pardo

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from the original

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARIA T. PARDO,)
Plaintiff,)
v.) Civil Action No. 211-166
WILSON LINE OF WASHINGTON, INC.)
JOSEPH I. GOLDSTEIN,)
Defendants.)

JUDGMENT

This cause having come on for final hearing at this term of court, and thereupon, upon consideration thereof, it is, by the Court, this _____ day of July, 1968, adjudged as follows:

1. That the complaint on foreign judgment filed herein by the plaintiff, Maria T. Pardo, shall be and hereby is dismissed with prejudice.
2. That the order for money judgment filed in the Queens County Branch of the Supreme Court of the State of New York #13174/1962, as exemplified by the certified copy thereof attached to the complaint for money judgment herein shall be and hereby is denied full faith and credit in this jurisdiction and is held hereby to be null and void.
3. That judgment shall be and hereby is entered in favor of the defendants, Wilson Line of Washington, Inc. and Joseph I. Goldstein, against the plaintiff, Maria T. Pardo, as to all matters complained of by the said plaintiff and for costs of this suit.

Judge.

Seen:

Henry H. Brylawski,
Attorney for Plaintiff,
Maria T. Pardo

AVAILABLE

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARIA T. PARDO,

)

Plaintiff,

)

v.

)

Civil Action No. 211-66

WILSON LINE OF WASHINGTON, INC.)
JOSEPH I. GOLDSTEIN)

Washington, D. C.

Tuesday, June 25, 1968

The above-entitled matter came on for hearing before The HONORABLE JOSEPH C. MC GARRAGHY, United States District Judge, at 10 a.m.

APPEARANCES:

HENRY BRYLAWSKI, ESQ.
For the Plaintiff

ERNEST HENRY, ESQ.
For the Defendants

P R O C E E D I N G S

DEPUTY CLERK: Civil Action No. 211-66, Maria T. Pardo vs. Wilson Line of Washington and Joseph I Goldstein; Mr. Brylawski for the plaintiff and Mr. Henry for the defendants.

THE COURT: Is the plaintiff ready?

MR. BRYLAWSKI: Good morning, Your Honor. Yes, I am ready.

THE COURT: Are you ready?

MR. HENRY: Yes, Your Honor.

MR. BRYLAWSKI: Your Honor, as I expressed yesterday in chambers, I am calling Your Honor's attention to the certified copy of the judgment we have in this case under the seal of New York. My complaint is based on that judgment and I rest my case based on that judgment.

So by calling Your Honor's attention to --

THE COURT: Just a second. The Clerk has just handed me a praecipe by Mr. Henry withdrawing the demand for a jury trial on behalf of the two defendants.

Do you concur in that?

MR. BRYLAWSKI: Yes. I will consent to that in writing, if Your Honor wishes.

THE COURT: Have you seen that?

MR. BRYLAWSKI: Yes.

THE COURT: I didn't mean to interrupt you, although I did do it.

MR. BRYLAWSKI: That is all right.

THE COURT: Do you have the judgment?

MR. BRYLAWSKI: The judgment itself was attached to my complaint so that it is in the jacket. It is under seal of the Court. So I proffer that judgment itself as my case.

THE COURT: You offer that as an exhibit in the case?

MR. BRYLAWSKI: Yes, I do, Your Honor, and ask Your Honor to accept it as such.

THE COURT: Do you have any objection?

MR. HENRY: I do object, if Your Honor please, because I think the record that is now before the Court is sufficient to destroy any possible prima facie effect of the judgment that adds an exhibit.

In that connection, I would like to, for the record, point out to the Court what is in our current record which by reason of the sworn answers of the plaintiff to written interrogatories now in the file the only basis for the New York State judgment was derived from no litigated evidence of the allegations that were contained in one single

affidavit which was not on personal knowledge but was upon information and belief by an attorney, and upon the coming in of the sworn answers to the written interrogatories the plaintiff herself admits that she had no personal knowledge, she admits that the sole basis for the exercise of the jurisdiction of that Court in New York was confined to four documents which were enumerated in her answers, all of which are now within the file of this Court and none of which taken individually or jointly with the other three in any way support the use of the "Long Arm" statute of New York.

In that connection, the Court files also contain the affidavits of Mr. Goldstein and a Mr. Noonan which were submitted in connection with a motion for summary judgment. Those affidavits categorically deny all of the allegations that were in this original affidavit of counsel in New York.

And under the Federal Rules of Civil Procedure, Rule 56, those affidavits should be taken as stating the facts as true, since there was no attempt at any stage of the proceedings, up til now, to deny under oath the accuracy of those statements in those sworn affidavits.

In addition, the "Long Arm" statute of the State of New York, as set forth in a little memorandum that Mr. Brylawski has prepared --

MR. BRYLAWSKI: Suppose I give that to the Court, as long as you are referring to it.

Your Honor, this is a memorandum of the New York statutes on which I am going to rely when the case of argument --

MR. HENRY: The "Long Arm" statute of New York reaches out beyond its jurisdiction and pulls in non-residents on the basis of some connection with the State of New York either transactions of business within the State or commits a tortious act within the State or owns, uses, or possesses any real property within the State.

Now ever since 1878, in the case which every law student learns at law school, the case of *Pennoyer v Neff*, 95 U.S. 714, it has been established the basic constitutional principle that non-residents of a particular jurisdiction may not have personal judgments, money judgments rendered against them unless they have been served with due process.

Now it is true that since that doctrine was enunciated and has been followed really without interruption anywhere within the United States, nevertheless there has been some modification of the question of what is due process.

In that connection, the Supreme Court has recognized the strength of so-called "Long Arm" statutes within

various jurisdictions which if they are properly exercised can reach out and bring into the jurisdiction a non-resident for some reason.

But it is only a statutory proposition and it must be strictly adhered to. It cannot be in effect, reach and overreach the common law principle and the constitutional principle. So that we come here, really, to the narrow question as to whether or not, under those circumstances, the New York jurisdiction was effective.

I say to the Court that it obviously should not have been effective and is not effective, since at the outset there was no claim that either Wilson Line of Washington, Inc. or Joseph I. Goldstein individually were within the boundaries of the State of New York and there served with process.

They were served with a process which emanated from the Court of New York and was transmitted here to the District of Columbia and a United States Marshal here served him with that process which was a summons or an invitation to come into the State of New York and answer a lawsuit in the State of New York.

The record here shows that the original action of Pardo was not against Wilson Line of Washington, Inc. or

Joseph I. Goldstein, but was a personal injury damage suit directed against a corporation known as Wilson Line of New York, Inc., and that was in 1961.

It was based upon the alleged personal injury of Miss Pardo on a vessel known as the HUDSON BELLE. I don't think I am going beyond the record in this case in saying this, because this is in the jacket of which Your Honor has custody.

The HUDSON BELLE, by the affidavit of counsel in New York, was then owned, titled in the Wilson Steamship Corporation.

MR. BRYLAWSKI: Could I interrupt you just a moment?

MR. HENRY: Yes.

MR. BRYLAWSKI: Your Honor, I don't like to interrupt counsel, but it seems to me the only argument is whether or not in our judgment there is some reason why our evidence shouldn't be received in evidence.

THE COURT: I was about to observe the argument should be made on a motion for summary judgment and that was denied.

MR. HENRY: That is true, Your Honor. It was denied only because the Court still felt there was a genuine

issue. My point is: this is the time to determine that genuine issue right now. And I say, for the record, that we must have in mind that the plaintiff has asked the Court to admit in evidence as prima facie case a certified copy of a judgment.

This is the time to interject an objection and not only just a legal argument with respect to that, but to look back at the record that is now before the Court to see whether or not it is entitled to admission in prima facie case.

And I say that what I am now saying is calling the Court's attention to the facts that are already in the file which, if looked at, will constitute --

THE COURT: Yes, but you are asking me to look at the facts which are in the form of affidavits and other papers and no evidence which has been offered to this Court.

MR. HENRY: If Your Honor please, I believe as a matter of practise that the written interrogatories and the sworn answers --

THE COURT: When they are offered in evidence, yes. But they are not in evidence yet.

MR. HENRY: If that be so, as the status of the case, in order to establish what is in the record and beyond,

and without waiving in any way or lessening my objection itself to the introduction of the certified copy as prima facie evidence and directing everything we say from here on to that question, I would then call as my first witness --

THE COURT: I have to rule on the offer first.

MR. HENRY: Well, I was assuming you had ruled.

THE COURT: No, I hadn't ruled. You have objected to it being received in evidence and treated as a prima facie case. I was hearing your objection. If you are through with your argument on the objection, I will rule.

MR. HENRY: Then, if Your Honor has not ruled, I would like to call Your Honor's further attention to the fact that it is not entitled to the kind of prima facie credit, when it obviously is not a judgment of this jurisdiction but a judgment of a foreign jurisdiction, and purports to be only on the basis of the "Long Arm" statute and obviously against a non-resident, and that, therefore, while it may be received in evidence, it doesn't constitute prima facie evidence of that fact.

THE COURT: I am of the opinion that it does constitute prima facie evidence and it will be received in evidence and your objection to it is overruled.

As I understand, you now rest.

MR. BRYLAWSKI: I rest, Your Honor; yes.

MR. HENRY: Then I would like to call as my first witness Maria T. Pardo, the plaintiff in this action, who should be here.

THE COURT: Is she here?

MR. BRYLAWSKI: No, she is not here. She hasn't been subpoenaed or required to be here under any process of this Court.

THE COURT: Did you subpoena her, Mr. Henry?

MR. HENRY: No. She is a non-resident of the District of Columbia and she is the plaintiff and she is not, apparently, prepared to be here in her own behalf. I would like the record so to show.

THE COURT: The record may so indicate, but in the view of the Court, she was not required to be here.

MR. HENRY: I would then call as my next witness Mr. John Windsor, who was the plaintiff's attorney in the action in the State of New York.

THE COURT: Is Mr. Windsor here?

MR. BRYLAWSKI: Your Honor, the same answer. If Mr. Henry is going to call them, I say he has to bring them. They are not my witnesses. They are not here. Neither one of them are here, Your Honor.

MR. HENRY: I want the record to show they are called for and are not here.

MR. BRYLAWSKI: Let the record show no effort was made to obtain them.

THE COURT: As a matter of fact, I assume, Mr. Henry, you knew they wouldn't be here.

MR. HENRY: I wasn't at all sure they would not be here.

I would then call Mr. Henry Brylawski as my next witness.

MR. BRYLAWSKI: Your Honor, I am going to object to being called. I am an attorney for the plaintiff in this case and I am suing on a judgment. I think that the proper order of proof should be in this case, if Your Honor please, the defendant himself who is sitting in the courtroom, Mr. Goldstein.

That to me is the person who should be called next.

THE COURT: What do you offer to prove by Mr. Brylawski?

MR. HENRY: The status of the case, as far as I can, from his knowledge.

THE COURT: I will sustain the objection.

MR. HENRY: If Your Honor please, then I would

like to offer in evidence the written interrogatories and the sworn answers thereto served upon the plaintiff, Maria T. Pardo, in this action.

THE COURT: Do you have any objection?

MR. BRYLAWSKI: No objection, Your Honor.

MR. HENRY: I would then ask Mr. Goldstein to take the stand.

THE COURT: Mr. Henry, you have offered these interrogatories and answers in evidence. Do you want to have them read in any form, because I am not familiar with them. If you want me to decide the case, I assume you do, I should know what I am deciding.

MR. HENRY: Yes, sir. I had in mind merely that I would, in effect, as a matter of chronology, acquaint Your Honor with the other matters and then bring those interrogatories and answers to Your Honor's attention.

THE COURT: I don't want to specify any particular order of proof. I leave that to you. Of course, I want you to be aware that I do not know the answers to interrogatories.

MR. HENRY: I understand; yes, sir.

(At this point the defendant Joseph I. Goldstein was sworn and examined. This portion is in a previous prepared transcript of about 44 pages.)

EXCERPT TRANSCRIPT - TESTIMONY OF ONE WITNESS ONLY

Whereupon,

JOSEPH I. GOLDSTEIN

called as a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HENRY:

Q Would you please state your full name, your residence, and your occupation?

A My name is Joseph I. Goldstein. I live at Cedar Beach Farm, Prince Frederick, Maryland. I am a business executive and a farmer.

Q Are you one of the defendants in this action?

A Yes, sir.

Q And are you the President of Wilson Line of Washington, Inc. the other defendant?

A Yes, sir.

Q Mr. Goldstein, would you please tell the Court approximately when and where your corporation, Wilson Line of Washington, Inc., was created?

A It was created in 1958 when I purchased the assets of the Washington operation from Wilson, Inc. of Wilmington, Delaware which was owned by City Investing Company.

Q In what State is this Wilson Line, Inc.?

A In the State of Maryland.

Q Where does it operate?

A It operates a boat line from Washington, D. C. to Mount Vernon, Virginia and to Marshall Hall amusement park.

Q That is, the Wilson Line of Washington, Inc.?

A Yes.

Q Has it ever had occasion to operate in any other State or Federal waters?

A No, sir.

Q You mentioned the purchase of the assets of the Wilson Line, Inc. of Wilmington. What, if any, interest do you have in that corporation as a stockholder, director, officer, employee, or any other kind of interest?

A None whatsoever.

Q Have you ever had?

A No, sir.

Q Mr. Goldstein, I call your attention to the document now in the Court file attached to the Plaintiff's Complaint known as the certified copy of a money judgment emanating from the State of New York.

MR. HENRY: I don't have that, if Your Honor please

THE COURT: I think the Complaint is at the top

of the jacket.

BY MR. HENRY:

Q And I ask you whether or not you ever participated in that action?

A I don't --

Q I am directing your attention to the money judgment that was entered in the State of New York in the case of Pardo versus Wilson Line of New York, et al, and ask you whether or not and, if so, what action you participated in in that proceeding?

A I had nothing to do with it.

Q Mr. Goldstein, I call your attention to a letter in the present Court file marked for identification as Exhibit 4-A, dated April 26, 1962, and ask you if you recognize that photostatic copy?

A Yes.

Q Is that your signature?

A Yes, sir.

Q At that time, you will notice, the document has a headline or letterhead of Wilson Line of Washington, with a Washington, D. C. address, and that the letter was addressed to a Mr. Dunham, New York, an attorney, and signed Wilson Steamship Corporation, Wilson Line of New York by you as

president of those corporations.

What interest or arrangement, if any, was there between your Wilson Line of Washington and those corporations?

A There was no connection whatsoever. In 1961, after I had purchased in 1958 my company here in Washington, the City Investing Company -- A company by the name of ABC Vending Company, which was handling any food concessions in Washington thought it would be a good idea if I --

Q Try to avoid what they thought and simply say what, if you know, they did.

A All right. The Wilson Line, Inc. had some vessels up in Wilmington. The Hudson Belle, the Sea Belle, there was another one called the Bay Belle, there was one called the John Messick, and these vessels were lying idle in Wilmington, Delaware.

A company was formed called Wilson Steamship Corporation. All of the stock was held b. the ABC Vending Company in Philadelphia. And their attorneys acted as Treasurers and Secretaries, and so forth, and I was elected President with the idea that if the thing was successful I would be made and would have an interest in the business, if it were successful.

We set up -- They set up companies called Wilson Line

of New York, Wilson Line of Boston, Wilson Line of Maryland, and Wilson Line of Pennsylvania. These companies were operating companies only. Didn't own any assets whatsoever.

The Wilson Steamship Corporation owned the assets and leased these assets to the individual operating companies.

Q Coming back to the Wilson Line of Washington, did it have any relationship to any of those corporations?

A No, sir; it had no relationship whatsoever.

Q Why did you use Wilson Line stationery in writing this particular letter? Do you know?

A Because we didn't have any Wilson Steamship Stationery or Wilson Line of New York stationery.

THE COURT: Do I understand you signed these letters as President of the Wilson Line of New York?

MR. HENRY: Yes, sir. The letter was --

THE COURT: I am curious, because I understood him to say he had no connection with the Wilson Line of New York.

MR. HENRY: All right.

BY MR. HENRY:

Q Would you clarify your statement, please, Mr. Goldstein, to explain to the Court what interest you had in Wilson Line, Inc. of Wilmington, Delaware? I believe you said

you had none.

A None. That is right.

Q Also, it wasn't mentioned before, but I will ask you now the same kind of question as to Wilson Excursion Lines, Inc.

A None.

Q Or Wilson Line Operating Company?

A None.

Q And ABC Vending Company?

A None.

Q But the Wilson Steamship Corporation and the Wilson Line of New York, were these corporations you testified were created as a result of this effort to activate these vessels.

A That is right. I had no investment whatsoever in any of those companies.

Q As to those companies, you were elected President of Wilson Steamship Corporation and Wilson Line of New York.

A That is right.

Q But you testified further that all of the creation of that was by the Philadelphia and Wilmington attorneys and they held all of the books and records?

A Right.

Q So that the letterhead of Wilson Line of Washin

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from your testimony, had no relationship to these companies?

A No relation.

Q But you were then a president of the corporation, sir?

A I was an elected president of those corporations and was president of those corporations at the time.

Q And you were acting in that capacity when you wrote that letter?

A Exactly.

Q Were you acting at all on behalf of Wilson Line of Washington at that time?

A No, sir; because there was no connection between Wilson Line of Washington. I am the sole stockholder of the Wilson Line of Washington.

Q Did there come a time when you purchased a vessel known as the S.S. HUDSON BELLE?

A Yes.

Q When I say "you", I refer to you or Wilson Line of Washington, Inc.

A Yes, sir.

Q When did that occur?

A Well, I will go back a little bit. Due to a maritime strike in New York, Philadelphia, Boston, and Baltimore,

the Wilson Steamship Company and all of its subsidiary companies went by the wayside. They were dissolved. All the corporations were dissolved and all the assets were taken back by City Investing Company, Wilson Line, Inc., and ABC Vending Company.

They held the assets as the owners of the assets. In January 1963, my boat, the MOUNT VERNON, which I am sure the Judge knows and everybody in the courtroom knows, sank at the pier due to a frozen cock during the freeze up. The Wilson Line was without a vessel.

Q You speak of the Wilson Line?

A The Wilson Line of Washington was without a vessel. Due to the fact that I was doing business with ABC Vending Company as the concessionaire on my big boat, and due to the fact that I owed Wilson Line, Inc. a great deal of money on mortgage when I purchased the company, they were anxious to see that the company kept going.

So they offered to sell to the Wilson Line of Washington the motor vessel HUDSON BELLE, which was one of the vessels that they had foreclosed on and, so to speak, cleared the record back.

So the Wilson Line of Washington purchased the motor vessel HUDSON BELLE, I think for \$350,000 or \$400,000, somethi

like that. And that was done in March of 1963. That was consummated. And I paid them the insurance money I got from the MOUNT VERNON plus gave them a purchase money mortgage, the two of them. I gave them a pari passu mortgage for the balance of the money.

Q This Wilson Line, Inc., is the same Wilson Line you had dealt with originally in buying the SS MOUNT VERNON?

A Right. I may say those Wilson Lines are pretty confusing.

Q Don't say anything, unless you are asked.

Do you know who owned the SS HUDSON BELLE in April 1961 or prior thereto?

A Before the Wilson Steamship Company bought it?

Q Yes.

A Wilson Line, Inc.

Q And do you know whether or not, as a result of that sale and purchase, there were any mortgage or preferred ship mortgages on the SS HUDSON BELLE in April 1961?

A After the steamship company bought it?

Q Yes.

A Yes, there was a very large mortgage on the HUDSON BELLE. It was mortgaged from the Wilson Steamship Company to the Wilson Line, Inc. and ABC Vending Company.

Q And do you know whether or not the Wilson Steamship Corporation, of which you were then president, paid the mortgage obligation just referred to?

A No, sir; it didn't.

Q Mr. Goldstein, do you know Maria T. Pardo, the Plaintiff in this action?

A No, sir.

Q Did you ever meet her?

A No, sir.

Q Did you ever know or meet or confer with Mr. John Windsor, an attorney in New York?

A No, sir.

Q Did either one of them ever approach you, to your knowledge?

A No, sir.

Q Mr. Goldstein, I call your attention to a statement made on behalf of the Plaintiff Pardo and filed in the action in the New York State proceeding by her attorney, Mr. Windsor wherein it was alleged under paragraph 22 thereof that on or about the first day of September 1961 the Defendant Goldstein, as officer, director, and controlling stockholder of the defendant corporations, which corporations by that time in the caption of the case included Wilson Line Operating

Company, Wilson Line, Inc., transferred, assigned and conveyed, and caused to be transferred, assigned and conveyed in the City and State of New York all of the properties and assets of the Defendant Wilson Steamship without any fair or other consideration by assigning, conveying, and transferring and removing same from the City and State of New York to Defendants Goldstein and Washington, meaning Wilson Line of Washington, causing Defendants Wilson and Steamship to be rendered insolvent thereby.

A That is a lie.

Q Is there any truth in it?

A No, sir. It is a lie.

Q In paragraph 23, it was alleged that said conveyances, transfers, and assignments were made for the purpose of fraudulently distributing the assets and properties of Wilson and as to Defendant Goldstein and Washington, meaning Wilson Line of Washington, and were made in New York with the intent to hinder, delay, and defraud present and future creditors of Wilson and Steamship including Plaintiff and such conveyances, transfers, and assignments of the properties and assets of the Defendants Wilson and Steamship rendered said defendants insolvent; that said fraudulent distribution was made in the City and State of New York on or about

September 1, 1961 without any fair or other consideration while said defendants Wilson and Steamship were insolvent and while Defendant Wilson was a defendant in said action, not Wilson of Washington but Wilson of New York, commenced by plaintiff in the Supreme Court, Queens County, New York or or about August 17, 1961, by personal service.

I ask you: Are any of those allegations true?

A No, sir. It can be verified by the Federal Court records in Baltimore, Maryland.

Q You have heretofore testified that you purchased on behalf of Wilson Line of Washington in the winter of 1963 the SS HUDSON BELLE?

A Yes, sir.

Q And you have already testified that you paid a consideration for that?

A Yes, sir.

Q Do you recall how much the insurance proceeds were available from the SS MOUNT VERNON which had sunk, you testified?

A I think I paid them \$180,000 in cash, I think it was, and the balance was a series of mortgages.

Q In that connection, are those mortgages still of record and outstanding?

A Well, in the interim I refinanced the boat through Riggs Bank. I borrowed \$350,000 from Riggs Bank and I had a second mortgage of \$125,000, a five-year second mortgage to Wilson Line, Inc.

Q Are they of record now?

A Yes, sir. In the Custom House.

Q Mr. Goldstein, you recall my questioning referred to September 1961 as contained in those two allegations as to those things that were alleged to be done fraudulently, a conspiracy. I ask you now whether at any time you participated in any such transactions?

A No, sir.

Q At what time or times did either you or Wilson Line of Washington ever do any business in the State of New York?

A Actually, Wilson Line of Washington has never done any business in the State of New York and the only time I ever went to New York in reference to this thing was one inspection trip that I made up there actually during the strike. There was no reason to go to New York, because the Seafarer's Union started a fight the minute we went in business.

I am talking about the Wilson Line of New York, when I say "we".

MR. HENRY: I would ask the Court to have this document marked for identification as Defendant's Exhibit No. 1 for identification.

DEPUTY CLERK: Defendant's Exhibit No. 1 marked for identification.

(Defendant's Exhibit No. 1 was marked for identification.)

BY MR. HENRY:

Q Mr. Goldstein, I hand you what has been marked for identification as Defendant's Exhibit No. 1 and ask you to examine the same and particularly the last page and tell us whether that is your signature.

A Yes, sir.

Q Do you recognize this document?

A Yes, sir. That is the purchase agreement Wilson Line of Washington made with Wilson, Inc. and ABC Vending Company in the purchase of the HUDSON BELLE.

Q I ask you to look at the last page again and tell me if you recognize any of the other signatories?

A Yes, sir. Col. Allan Macnicol, President of the Wilson Line, Inc.; Mr. Samuel A. Aleeker, Vice President of ABC Vending Company, and my name.

MR. HENRY: I would like to offer this in evidence.

THE COURT: Objection?

MR. BRYLAWSKI: Your Honor, I have no objection.

THE COURT: Without objection, it will be received.

(Defendant's Exhibit No. 1

was received in evidence.)

MR. HENRY: I ask that this document be marked
for identification as Defendant's Exhibit No. 2.

DEPUTY CLERK: Defendant's Exhibit No. 2, marked
for identification.

(Defendant's Exhibit No. 2

was marked for identification.)

BY MR. HENRY:

Q I show you a document which has been marked for
identification as Defendant's Exhibit No. 2, Mr. Goldstein,
and ask you if you recognize that document?

A Yes, sir. That is a bill of sale for the motor
vessel HUDSON BELLE from Wilson Line, Inc. and ABC Vending
Company to Wilson Line of Washington.

Q I notice it says oil screw GEORGE WASHINGTON
at this point.

A We changed the name from HUDSON BELLE to GEORGE
WASHINGTON.

Q This is the document you received on behalf of the

HUDSON BELLE?

A It is a bill of sale.

MR. HENRY: I offer this in evidence.

THE COURT: Without objection it will be received.

(Defendant's Exhibit No. 2

was received in evidence.)

MR. BRYLAWSKI: No objection, Your Honor.

BY MR. HENRY:

Q Will you examine that document which you have just identified as Defendant's Exhibit No. 2 and tell us the date thereof?

A The first of April 1963.

Q Did you have any interest in this vessel prior thereto?

A No, sir.

Q When I say "you", I mean you individually or Wilson Line of Washington?

A No, sir. That was the vessel that was foreclosed upon by the Wilson Line, Inc. and ABC Vending Company and it was their vessel.

MR. BRYLAWSKI: Your Honor, I am going to object to that last statement he just made, unless there is some proof of it. He said that was the vessel that was foreclosed

by ABC and it was their vessel. That is strictly hearsay. If it is going to be relied upon by the defendant, I will demand proof of it.

MR. HENRY: It is not going to be relied on.

MR. BRYLAWSKI: Then I move that it be stricken.

THE COURT: I will grant the motion to strike that part of it.

MR. HENRY: If Your Honor please, during the discovery processes and the pretrial proceedings in this case, certain documents were produced by the plaintiff's counsel, among them a document known as the certificate of enrollment and license of the oil screw called HUDSON BELLE.

I called on the counsel for the plaintiff and I ask him if he had any objection to that being offered in evidence.

MR. BRYLAWSKI: Which one is that which you are offering? There is more than one document there.

Your Honor, what Mr. Henry is going to offer the Court maybe it would be well for Your Honor to look at the copy I have. It is a copy purporting to be a certificate of enrollment of the HUDSON BELLE to ABC Vending. This is a photostat of a certificate. It is not the original certificate.

It hadn't been produced by subpoena from the records of the Bureau of Customs where the original certificate would be. I would object to it being admitted.

THE COURT: Is it the same photostat or another photostat, rather an identical photostat with that which is in the file in the case?

MR. HENRY: Yes.

THE COURT: And which was produced by the plaintiff?

MR. BRYLAWSKI: Yes.

THE COURT: How can you object to it?

MR. BRYLAWSKI: I produced it as something which I am required to produce by their interrogatories, but I am not offering it into evidence. To offer it into evidence, it seems to me --

THE COURT: When you produced it, didn't you certify to its authenticity?

MR. BRYLAWSKI: I do think it is authentic. I think when they call on it they have to get it from the Treasury Department rather than me.

THE COURT: Is that your only objection?

MR. BRYLAWSKI: Yes.

THE COURT: I will overrule the objection.

MR. HENRY: I ask that this document be identified as Defendant's Exhibit No. 3.

DEPUTY CLERK: Defendant's Exhibit No. 3 marked for identification.

(Defendant's Exhibit No. 3

was marked for identification.)

THE COURT: Are you offering it in evidence?

MR. HENRY: I offer it in evidence.

THE COURT: It will be received.

(Defendant's Exhibit No. 3

was received in evidence.)

MR. HENRY: I now ask that this document be identified as Defendant's Exhibit No. 4 for identification.

DEPUTY CLERK: Defendant's Exhibit No. 4 marked for identification.

(Defendant's Exhibit No. 4

was marked for identification.)

MR. HENRY: And this document as No. 5.

DEPUTY CLERK: Defendant's Exhibit No. 5 marked for identification.

(Defendant's Exhibit No. 5

was marked for identification.)

THE COURT: Have you shown those to Mr. Brylawski

or does he know what they are?

BY MR. HENRY:

Q Mr. Goldstein, I ask you to examine what has been identified as Defendant's Exhibit No. 4 for identification purposes and ask if you can further identify this document?

A This is a copy of the first preferred ship mortgage from Wilson Line of Washington, Inc. to Riggs National Bank of Washington.

Q Is that a true copy of what Wilson Line of Washington did so give to that creditor?

A Yes, sir; and it is on file in the Custom House.

Q And I ask you to likewise comment as to the document that has been identified as Defendant's Exhibit No. 5.

A Yes, sir. This is a copy of the second preferred ship mortgage to Wilson Line, Inc. from Wilson Line of Washington, Inc.

MR. HENRY: I offer these documents.

MR. BRYLAWSKI: I object to them solely on the basis of relevancy.

THE COURT: You don't object to them on the ground they are copies? You object solely on the grounds of relevancy?

MR. BRYLAWSKI: Yes, because, Your Honor, I don't

see what connection the mortgage to the Riggs National Bank -- He may have borrowed money from the bank. I assume he did, to mortgage the vessel. But it has nothing to do with the case.

That was after the accident and after he got the vessel here.

MR. HENRY: I call counsel's attention to the fact that the second mortgage is back to Wilson Line, Inc.

MR. BRYLAWSKI: I don't doubt that, but all these took place -- What year was this?

THE COURT: Its relevancy may be remote, but there may be some relevancy and I will receive them.

MR. HENRY: Thank you, sir.

BY MR. HENRY:

Q Now these documents just referred to as Defendant's Exhibits 4 and 5 purport to be a first and second preferred mortgage on the GEORGE WASHINGTON, or GEORGE WASHINGTON?

A Yes.

THE COURT: Is it still known as the GEORGE WASHINGTON?

THE WITNESS: Yes, sir.

THE COURT: I haven't been on it recently.

THE WITNESS: This is the new boat.

MR. HENRY: The other one was the MOUNT VERNON.

THE COURT: Let me get straight on that. This is not the boat --

MR. HENRY: This is the old HUDSON BELLE.

THE COURT: This is the HUDSON BELLE?

MR. HENRY: That had been up in New York.

THE WITNESS: The one that sank was called the MOUNT VERNON.

MR. BRYLAWSKI: This is the same vessel on which the alleged accident occurred in which the suit is brought. They changed the name of it to the GEORGE WASHINGTON.

THE COURT: All right. I think that is clear with me now.

MR. HENRY: Yes, sir.

BY MR. HENRY:

Q Do you know where any other copies of these mortgages are lodged?

A They are lodged in the Custom House in Washington,
D. C.

Q Are any of them on the boat?

A Yes, sir. They have to be kept on the vessel.

That is part of the law.

Off the record --

THE COURT: Better not tell me anything.

THE WITNESS: I was going to tell him about the
GEORGE WASHINGTON --

MR. HENRY: Don't offer anything.

THE COURT: Mr. Henry, do you want to have the
Clerk mark those as being received?

MR. HENRY: I am sorry.

DEPUTY CLERK: Defendant's Exhibits 4 and 5 re-
ceived in evidence.

(Defendant's Exhibits Nos. 4
and 5 were received in evidence.)

MR. HENRY: I would like this document to be marked
for identification as Defendant's Exhibit No. 6.

DEPUTY CLERK: Defendant's Exhibit No. 6 marked
for identification.

(Defendant's Exhibit No. 6
was marked for identification.)

BY MR. HENRY:

Q Mr. Goldstein, I hand you what has been marked for
identification as Defendant's Exhibit No. 6 and ask you if
you can identify that.

A Yes, sir. This is a supplemental purchase money deed of trust made the first of April 1963 between Wilson Line of Washington, Inc. and Marshall Hall Park, Inc. and James F. Hutchison of New York, and Howard Noonan of New York, which are trustees for Wilson Line, Inc.

Q This is not an original. Where did the original go?

A The original went to Wilson Line, Inc.

Q This is your copy?

A Yes, sir.

Q Do you have any control over the custody of the original?

A I wish I did.

Q The answer is, no?

A No.

Q Is it your testimony that this is a true copy?

A Yes, sir.

MR. HENRY: I offer this.

MR. BRYLAWSKI: Is this a mortgage of the HUDSON BELLE?

MR. HENRY: This is a supplemental deed of trust incorporating some of the consideration for the same transactions.

MR. BRYLAWSKI: Is this still in effect?

MR. HENRY: As a matter of fact --

THE COURT: Are you on the record or off the record?
I am not sure.

MR. BRYLAWSKI: I am sorry. I was trying to find out whether I should object to this. I wanted to learn a little bit about this document.

MR. HENRY: This is a mortgage on the other property of Wilson Line of Washington that was in effect at the time. It has since been released, because of the refinancing that occurred.

MR. BRYLAWSKI: If this was a mortgage of other property of the Wilson Line --

MR. HENRY: -- to secure the same debt --

MR. BRYLAWSKI: -- I am going to object on the grounds of relevancy. They can mortgage anything they want to, but I don't think it has anything to do with this case.

THE COURT: What is the relevancy?

MR. HENRY: In addition to giving the preferred mortgage on the boat, we also had to give the supplemental purchase money deed of trust on some of the other property to secure --

THE COURT: What is its relevancy?

MR. HENRY: To show that we did, in fact, have an indebtedness that we made good consideration for the asset the HUDSON BELLE which we purchased contrary to the allegations which said that we did it without consideration.

THE COURT: I will overrule the objection. It will be received.

MR. HENRY: Thank you.

DEPUTY CLERK: Defendant's Exhibit No. 6 is received in evidence.

(Defendant's Exhibit No. 6 was received in evidence.)

MR. HENRY: Your witness.

THE COURT: I will take a short recess at this time.

(Short recess.)

MR. HENRY: If the Court please, I failed to get one document identified before cross-examination. I alerted Mr. Brylawski. I would like to have this document marked for identification as Defendant's No. 7.

DEPUTY CLERK: Defendant's Exhibit No. 7 marked for identification.

(Defendant's Exhibit No. 7 was marked for identification.)

BY MR. HENRY:

Q Mr. Goldstein, I ask you to look this document over and identify it further for us, if you can.

A This is a receipt from the -- Robert Warner, Deputy Collector of the Customs in Washington in connection with the oil screw GEORGE WASHINGTON.

MR. BRYLAWSKI: I have the same objection to that. A receipt from the Collector of Customs, to me, is not relevant to the case. But otherwise I have no objection.

THE COURT: It will be received.

DEPUTY CLERK: Defendant's Exhibit No. 7 is received in evidence.

(Defendant's Exhibit No. 7 was received in evidence.)

THE COURT: Now are you through, Mr. Henry?

MR. HENRY: Yes, sir.

THE COURT: Mr. Brylawski, you may proceed with your cross-examination.

MR. BRYLAWSKI: Yes, sir.

CROSS-EXAMINATION

BY MR. BRYLAWSKI:

Q Mr. Goldstein, referring now to the vessel the

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HUDSON BELLE, and when I say HUDSON BELLE I mean the GEORGE WASHINGTON, I will refer to it as the HUDSON BELLE for purposes of clarity -- Before it was owned by the Wilson Line or the Wilson Steamship Corporation, who was it owned by?

A Wilson Line, Inc. of Wilmington, Delaware.

Q You had no connection with that company, I believe you testified?

A No, sir.

Q And Wilson Line, Inc. of Delaware transferred the vessel in some way to the Wilson Steamship Corporation?

A Yes.

Q You were president of that corporation, were you not?

A Wilson Steamship Corporation; yes, sir.

Q How much was the sale price from Wilson Steamship Corporation to Wilson Line, Inc.?

A There was no sale price. You said how much was the sale price from Wilson Steamship to Wilson Line, Inc. Wilson Line, Inc. sold it to Wilson Steamship Corporation.

THE COURT: You reversed the order, I think.

MR. BRYLAWSKI: Let me restate it.

BY MR. BRYLAWSKI:

Q How much did Wilson Steamship Corporation pay to

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Wilson Line, Inc. for the boat?

A The boat, if I can recollect, was bought in a package deal. I think it was several boats and two amusement parks, one on Chesapeake Bay and one in New Jersey, and I think the whole price was something like \$2 million. I think it was.

I don't know what the breakdown was at the time.

Q Wilson Line of New York, Inc. paid \$2 million for --

A No, sir. Wilson Line of New York didn't buy anything.

Q Wilson Steamship Corporation?

A Yes, sir.

Q Paid \$2 million to Wilson Line, Inc. for this package which included the HUDSON BELLE?

A Which included the HUDSON BELLE.

Q What amusement park did it include?

A Tolchester Amusement Park on Chesapeake Bay and Riverview Amusement Park in Pensville.

Q How much cash was put up by Wilson Steamship Corporation?

A Say it again?

Q How much actual cash in money was paid?

A Wilson Steamship Company borrowed \$1 million from

ABC Vending Company and that was the cash that was used.

Q So actually the Wilson Steamship put in no money of its own, except money which it in turn had borrowed? Is that correct?

A That is correct.

Q Using these same vessels and properties as security?

A Right.

Q What was the capitalization of Wilson Steamship Corporation?

A I really don't know, because that was prepared by the lawyers of ABC Vending Company.

Q How much did you put in?

A Nothing.

Q How much stock did you own?

A I didn't actually own any stock. It was all held in escrow by the two companies, Wilson Line, Inc. and ABC Vending Company.

Q And as far as you know, then, nobody ever put any cash into that corporation?

A I really don't know.

Q Would you say that would be a fair statement?

A The only cash that was put in was loaned by ABC Vending Company, yes.

Q You put in none?

A No, sir.

Q And you know of none that was put in?

A Only that put in by ABC Vending Company.

Q And that was the money loaned for --

A Actually, I go back and make another statement. The ABC Vending Company put up a million dollars. \$900,000 was used as a down payment and \$100,000 was used as working capital for the money. So that was the million dollars.

Q But ABC had owned those properties before, had they not?

A Not ABC, Wilson Line, Inc.

Q Wasn't Wilson Line a co-holder of the mortgage?

A Yes. They actually hadn't gotten fully paid. They only got the \$900,000 and they took back a mortgage with ABC Vending Company.

Q Who owns ABC Vending?

A ABC Vending Company is on the big board. That is a New York Stock Exchange company.

Q Are they owned by the same people that owned Wilson Line of New York?

A No. I don't know who owns it now. It has been merged into the Ogden Corporation, I understand, which is a big conglomerate.

Q Just to make sure I understand now, Mr. Goldstein, when Wilson Steamship Corporation purchased the HUDSON BELLE along with some other boats, vessels and other properties, it borrowed \$1 million from ABC Vending?

A Right.

Q And used that money for the purchase money?

A Right.

Q And used another \$100,000 or part of that \$1 million, \$100,000 of that \$1 million, for operating capital and did not have any operating capital of its own?

A That was it.

Q You were the president, but you owned no stock?

A Right.

Q Did you participate in these transactions?

A Only as to what I was told to do by ABC Vending Company. I was acting on their behalf, actually, and not on my own.

Q Let's turn for a moment to Wilson Line of New York, Inc. Did it ever own the HUDSON BELLE?

A No, sir. Wilson Line New York never owned anything.

Q What was its capitalization?

A I don't know. But it was just an operating company

It never really owned anything.

Q Was any money put into it by any person that you know of?

A No, sir.

Q You were the president of that corporation?

A Yes, sir.

Q Did you hold stock?

A No, sir.

Q At the time of the accident complained of, which I might say was July 3rd or 4th of 1961, is it true that the Wilson Line of New York had chartered the vessel from the Wilson Steamship Corporation?

A The vessel was under charter from the Wilson Steamship Corporation to Wilson Line of New York.

Q And it was while it was under charter to Wilson Line of New York that this accident occurred?

A I imagine so.

Q Now your testimony is then that the Wilson Line of New York was the operating company and Wilson Steamship Corporation was the owner company?

A Right.

Q Why did you separate the two companies? Why didn't Wilson Steamship Corporation operate the vessel itself?

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A That was all done by the lawyers in Philadelphia.
I don't know why.

Q Didn't you, as president of the corporation, have
any question in your mind as to why this should be done?

A I didn't have any money invested. What did I care?

Q The president of the corporation is the actual
manager of the corporation generally, isn't he?

A Sometimes yes and sometimes no. I know of treasurers
who are running corporations. The president just sits there
as a figurehead. I was a figurehead. I didn't do anything.
I didn't get paid and I didn't do anything.

Q And you didn't know too much about it?

A I didn't care. I didn't have any money invested
in it.

Q Mr. Goldstein, you have referred to a letter --

MR. BRYLAWSKI: Excuse me just a moment, Your
Honor.

BY MR. BRYLAWSKI:

Q -- dated April 26, 1962. Your counsel referred to
a latter on the letterhead of Wilson Line of Washington,
D. C. I would like to read the first portion of this letter
and ask you a question about it. This is to Mr. C. B. Dun-
ham, Dunham and Evers, 62 Beaver Street, New York 5, New York.

"Dear Mr. Dunham: Your letter of April 23" -- parenthetically, this is dated April 26, 1962 -- "addressed to our general counsel, E. F. Henry, Esquire, relating to the seven law suits wherein you have appeared for us has been referred to our attention.

"In the light of the current financial condition of our company, it is impractical to continue to pile up defense costs and unfair to expect you to continue to represent us without fee or reimbursement for costs. Under the circumstances, you are hereby released from your engagement as counsel in the cases listed as follows:"

MR. BRYLAWSKI: And Your Honor, for clarity I am just going to name one, Pardo versus Wilson. That is the lawsuit here.

"It is with real regret that we authorize this release as we have found your services quite satisfactory in every respect." And I am going to eliminate the rest of the letter as being irrelevant.

BY MR. BRYLAWSKI:

Q : Mr. Goldstein, that is signed, "Sincerely, Wilson Steamship Corporation, Wilson Line of New York", by Joseph I. Goldstein, President.

You have seen this letter before?

A Yes, sir.

Q Did you write this letter?

A Yes, sir.

MR. BRYLAWSKI: Your Honor, I am going to introduce this letter as Plaintiff's Exhibit No. 1.

DEPUTY CLERK: Plaintiff's Exhibit No. 1 marked for identification.

THE COURT: With no objection it will be received.

DEPUTY CLERK: Plaintiff's Exhibit No. 1 received in evidence.

(Plaintiff's Exhibit No. 1 was marked for identification and received in evidence.)

BY MR. BRYLAWSKI:

Q Mr. Goldstein, you testified under direct examination by Mr. Henry that you did not participate in the so-called Pardo action, that you had nothing to do with it. Doesn't this letter really contradict that statement; that you did have something to do with it?

MR. HENRY: It is argumentative, Your Honor.

THE COURT: I will overrule the objection.

THE WITNESS: I didn't really have anything to do with it. What really happened was after this whole thing

sort of blew up in everybody's face, I imagine if I had put up a million dollars and I had all this money invested and everything blew up I would get a little angry with somebody.

I think what happened was we were a little bit -- We almost got like you call a divorce between ABC Vending, Wilson Line, and myself. They were sort of teed off at me a little bit, because of the fact that this whole thing blew up.

They sort of sloughed everything off on me. And I had to handle it the best way I could. I really didn't have anything to do with it. So I went to my attorney, Mr. Henry, who had nothing to do with Wilson Steamship Corporation.

He didn't have anything to do with Wilson Line of New York. I had to run to somebody for protection and that is why Mr. Henry's name is mentioned in the letter. I didn't want Mr. Dunham, who is a very fine gentleman, to be sitting out on a limb and not getting paid.

I think lawyers should be paid. I wasn't going to use my money for Wilson Line of New York. It was a mistake on my part. If I had known we were going to go to Court some day, I would never have written that letter.

BY MR. BRYLAWSKI:

Q You actually wrote that letter as President of Wilson Line of New York and Wilson Steamship Corporation?

A Right.

Q Mr. Goldstein, your corporation, Wilson Line of Washington, Inc., is the present owner of the same vessel we are referring to, the HUDSON BELLE now the GEORGE WASHINGTON?

A Yes, sir.

Q My understanding of your testimony is that somehow the vessel came out of the ownership of Wilson Steamship Corporation and into your company. Would you tell me how that happened?

A If you will take that certificate of enrollment there that he has as evidence, it is right in that enrollment as to how that happened.

Q You tell us.

A It was foreclosed upon by Wilson Line, Inc. and ABC Vending Company and they had sole possession of the boat. They cleared all the assets by foreclosure proceedings and then when my boat sank, I didn't have anywhere else to turn but to go to them and get a boat.

They had all the big boats in the United States at the

time. All of them. That enrollment certificate shows that it was done. If you will pass it to me I will read it, if you want me to.

Q I asked you for your statement.

A That is the proof of the statement that I made before, that it was foreclosed upon. It is right in that enrollment certificate.

Q The Wilson Line of New York, Inc. which was the operator of the boat, not the owner but the operator at the time, you testified as to Wilson Steamship Corporation how it got its money.

How did the Wilson Line of New York get its money, if it had any?

A From the operation of the boats.

Q Did it have any capitalization money?

A I don't think so. It was a -- I am not a lawyer. I don't know what kind of corporation you call it. It was just a shell corporation.

Q When these corporations -- Are they in operation now, Wilson Line of New York?

A No. They all went out of business at the time of the fiasco.

Q Was there any formal dissolution proceeding?

A I am sure there was.

Q Who conducted them?

A The law firm of Schnader, Harrison, Seigel, Lewis of Philadelphia.

Q Do you have any documents that would indicate they were formally dissolved?

A All of the documents are in the Court. The President of the American Bar Association now handled some of this transaction.

Q Do you have any copies of them?

A It is all a matter of Court records in all of the different places where they operated.

Q Was notice given to the creditors of the dissolution of the corporations?

A I am sure there was.

Q Do you have any personal knowledge?

A I don't know of any suits outstanding against the corporations.

Q You know of this one.

A This is the only one I know of.

Q And the six others mentioned in your letter.

A They were the damage suits that resulted from the fight between the two unions.

Q Was any payment made to any of these seven persons who were injured?

A Not that I know of.

Q Was any payment made to anyone that you know of?

A You mean of these damage suits?

Q No, to any creditor of the corporation.

A Not that I know of. I didn't make any.

Q Actually, at the time of dissolution, isn't it correct there wasn't any money to pay anyone?

A As best you can explain it.

Q You are the sole owner of Wilson Line of Washington, Inc., you say?

A Yes, sir.

Q I assume there is capitalization there? You have a cash investment in the corporation?

A I have a cash investment of \$2-1/2 million.

Q And you are the president of that corporation?

A That is right.

MR. BRYLAWSKI: Will Your Honor indulge me just one moment?

I have no further questions, Your Honor.

THE COURT: Do you have any redirect, Mr. Henry?

MR. HENRY: No, sir.

MR. BRYLAWSKI: Your Honor, Mr. Henry did read from an affidavit of Mr. Windsor. He read certain portions of it to Mr. Goldstein and inasmuch as that affidavit has been referred to and that affidavit is part of the New York case, I am going to ask that that affidavit be admitted into evidence as an exhibit.

MR. HENRY: I object.

THE COURT: Procedurally, I just wonder if Mr. Henry shouldn't conclude his testimony and then give you an opportunity to offer anything further that you may call for rebuttal.

MR. BRYLAWSKI: Maybe I am a little bit mixed up. Since it was referred to by him and read by him and not introduced, then I would like the opportunity to introduce that document.

THE COURT: I think that would more properly come at the end of the defendant's case.

MR. HENRY: I was about to say I didn't want it introduced during my proffer of testimony.

THE COURT: I didn't know you were going to say that, but that is what occurred to me.

MR. HENRY: If Your Honor please, I would like to offer the written interrogatories and the sworn answers

thereto served upon and replied to by the plaintiff, Maria T. Pardo that are now in the file jacket of this Court.

THE COURT: You offered them a little while ago, didn't you? I think you did. You told me that you would read them at a later time.

MR. HENRY: I would like now to call Your Honor's attention to all of the items that have been offered, including those.

If Your Honor please, I would like to call the Court's attention to the written interrogatories directed to the plaintiff wherein the plaintiff was asked, among other things, in interrogatory No. 3, "Has anyone made available to you for use or possible use in this action or in the New York action any information relative to any meetings, talks, or correspondence with either Joseph I. Goldstein or Wilson Line of Washington, Inc., and, if so, please state names, dates, places, and locations, etcetera."

The answer to that was, "No."

And then the following interrogatory, No. 4, it says, "State with precise description each and every record, document, and any other basis upon which you rely for the statements made by you under oath in your amended complaint filed in the Supreme Court of the State of New York, County

of Queens, action indexed as 13174 over 1962, and entitled Pardo versus Wilson Line of New York, Inc., et al, as follows:

A, in paragraph 15 of said complaint that Wilson Line of Washington, Inc. was authorized to and did transact business in the State of New York;

B, in paragraph 16 of said complaint that Joseph I. Goldstein was an officer, to wit, President, a director and controlling stockholder of defendant corporations as this description applies to Wilson Line Operating Company and Wilson Line, Inc.;

C, in paragraph 19 of said complaint that Joseph I. Goldstein, as President, director and controlling stockholder of the corporate owner of the vessel S.S. HUDSON BELLE did on or about April 17, 1961 cause the said vessel to be transferred without fair or other consideration from Wilson Line of New York to Wilson Steamship Corporation and thereafter cause the same vessel to fraudulently be registered with the United States Bureau of Customs.

And then follow D through I simply referring to the further allegations in her original amended complaint against us, Wilson Line of Washington, Inc. and Joseph I. Goldstein in the New York proceeding.

Her answer to all of that was, in effect, no.

THE COURT: Give me the answer.

MR. HENRY: No.

Answer to three and four: The documents which my attorney has in his file and which may be used by him in connection with this case include the following: Copy of letter dated April 26, 1962, which has been offered in evidence, from Joseph I. Goldstein, President of Wilson Steamship Corporation and Wilson Line of New York to Mr. C. B. Dunham; copies of the following documents and papers which were obtained by my attorney in support of my claim -- and these are the following:

Copy of a report of Stone's Mercantile Agency giving the history of Wilson Steamship Corporation and Wilson Line of Washington, Inc. and Joseph I. Goldstein.

Copies of consolidated certificates of enrollment and license of the vessel HUDSON BELLE and GEORGE WASHINGTON.

She adds further, "My attorney may produce other documents at trial."

But the question to her was namely, precisely, everything. And that is all she named, the four documents.

Thereafter we introduced the documents exhibit which was admitted as Defendant's Exhibit No. 1 and I am now confused, because I think the interrogatories and

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answers thereto should be referred to --

THE COURT: I think the interrogatories and the answers should be given an exhibit number.

MR. HENRY: I will ask that they be given numbers "X" and "Y", rather than disturb the order here.

THE COURT: Can't we do this: give them Exhibit A?

MR. HENRY: Exhibit A and Exhibit B, yes. Thank you.

I would now like Your Honor to have the benefit of the exhibits which have been introduced and which have only been referred to but not --

THE COURT: Can't you summarize for me what they contain so far as is relevant to this case?

MR. HENRY: Yes, sir. Defendant's Exhibit 1 is the controlling document of March 30, 1963, whereby Wilson Line of Washington acquired for the first time any interest in the HUDSON BELLE, the old HUDSON BELLE, which was changed to the name of GEORGE WASHINGTON, and is the document of purchase and sale, and which shows the exact consideration.

No. 2 is the bill of sale, which obviously follows.

THE COURT: What is the date of that bill of sale?

MR. HENRY: The bill of sale is dated April 1, 1963, following the March 30, 1963 agreement.

And the mortgages that I have referred to here

are not of that date but of a later date following refinancing of the vessel by paying off the original mortgage and financing through Riggs Bank and continuing to have an obligation to Wilson Line of Washington.

And reverting back, the item, Defendant's Exhibit 3 is the consolidated certificate of enrollment which did occur March 8, 1963 wherein the ABC Vending Company and Wilson Line became the owners of the HUDSON BELLE and wherein it is recited that it was the old certificate of enrollment and license was then surrendered, ownership changed, vessel sold by U.S. Marshal, bill of sale by order of the United States District Court of the United States for the District of Delaware dated at Wilmington October 25, 1962.

This is the chain of title from which resulted its transfer.

THE COURT: ABC and Wilson --

MR. HENRY: -- Line of Delaware.

THE COURT: Acquired ownership of the vessel in 1962.

MR. HENRY: Through the procedure of the U.S. Marshal.

THE COURT: Through the Marshal's sale in Wilmington Delaware; is that right?

MR. HENRY: Yes, sir.

Then, as a result of the agreement of sale and the actual bill of sale, there was placed on record in the U.S. Customs, as required by law, the new ownership and references to the preferred mortgages which were then placed on the vessel to secure the balance of the purchase price and that document then shows the new name of GEORGE WASHINGTON.

It also shows the liquidation of the bill of sale referred to and of the two preferred mortgages in the total amount of \$582,000-odd and \$91,489, and there is further statement made by the Collector saying one copy shall be kept aboard the vessel at all times, which, of course, as was testified, was done.

So that I feel these documents now are before Your Honor and I would like to pursue the further proposition that there is in the record the affidavit of Mr. Goldstein, most of which of the contents he has already testified here under oath here today, but also the affidavit of Mr. Noonan, who was identified as having authority and representation of the Wilson Line, the Wilson Excursion Lines, and Wilson Line Operating Company --

THE COURT: I don't see how I can consider the affidavit, Mr. Henry.

MR. HENRY: On this proposition: They duly filed in this court proceeding a motion for summary judgment. They were undenied under oath. The procedure of Rule 56 did require the court to consider at that time that they were, in fact --

THE COURT: This is a trial.

MR. HENRY: I understand, sir. I want the record to show that I have made that proffer.

THE COURT: Very well.

MR. HENRY: Thank you, sir.

THE COURT: Do you have anything further in the way of direct testimony?

MR. HENRY: Nothing on direct, sir.

MR. BRYLAWSKI: Your Honor, may I then ask that there be introduced into evidence as Plaintiff's Exhibit the affidavit from Mr. Windson, I believe that you read an excerpt from. Maybe I will ask that that be extracted and introduced as a document.

MR. HENRY: I am sorry, Mr. Brylawski. It isn't in the file.

THE COURT: Is that an affidavit which was filed in New York as the basis for jurisdiction?

MR. BRYLAWSKI: Yes, Your Honor.

MR. HENRY: I would simply object to portions of it which I think are irrelevant and immaterial and self-serving and the affiant isn't here to be cross-examined.

THE COURT: I will receive it.

MR. BRYLAWSKI: Will you produce your copy, Mr. Henry? I may have an extra one. I want to make sure it is the same one.

MR. HENRY: Mine is marked up a bit.

THE COURT: Are there any markings on it that you want to erase?

MR. HENRY: No. They are for emphasis.

MR. BRYLAWSKI: Your Honor, what I will do, instead of taking this, I wanted to make sure what the document was. I will produce and show to counsel a document which is under the seal of the Court and it may be a little better. Excuse me a moment.

Your Honor, what counsel had referred to and I wanted to make sure was the amended complaint under which this action was brought in New York, and I would like to offer this at this time as Plaintiff's Exhibit No. 2. This is actually under the seal of the Court, a certified copy.

I had to take the clip off of it.

THE COURT: I think we ought to get clear as to

what purpose it is serving.

This amended complaint was filed in New York, as I understand it, and did have attached to it an affidavit which I have said I would receive in evidence, but I am not sure I can consider it as proof of the facts contained therein.

MR. BRYLAWSKI: It has been alluded to and portions of it read by the defendant.

THE COURT: I understand that.

MR. BRYLAWSKI: And I feel, therefore, that the whole document should be before the Court.

THE COURT: I am going to receive it, but I want to make clear that it has not been received as proof of the facts contained in the document.

MR. BRYLAWSKI: Yes, sir.

Now, Your Honor, if you please, Mr. Henry also has read into evidence the answers to interrogatories from Mrs. Pardo, the plaintiff. Attached to those deposition answers were certain documents which we were asked to be produced.

They have now been admitted into evidence as part of the defendant's case. Since they are voluminous, I would like to take the opportunity to read one page of the Stone's Mercantile Report which is part of the answers to interrogatories.

What I am asking you to do is to pay special attention to this portion, rather than read the whole --

THE COURT: What do you say?

MR. HENRY: I object to that, because I didn't introduce that. I referred to it as one of the four documents.

THE COURT: You introduced the entire answer to interrogatories.

MR. HENRY: Yes. It was referred to only in there. The Stone's Mercantile Agency Report is the worst kind of hearsay.

THE COURT: I say it is not proof of the facts contained in the report and is received solely as an exhibit attached to the interrogatories, and I will receive it for that purpose.

MR. BRYLAWSKI: Very well, Your Honor, but I wish to call to the Court's attention this was produced not by me but by the defendant.

THE COURT: I understand that. It was produced by you to this extent: it was part of an answer to an interrogatory made by your client.

MR. BRYLAWSKI: That is correct. That, I take, is the position adopted by Mr. Henry as a part of his case.

MR. HENRY: Not at all.

MR. BRYLAWSKI: In other words, I have your permission to read this, do I not?

THE COURT: Yes.

MR. BRYLAWSKI: This is called the Wilson Steamship Corporation ownership. Incorporated about April 1961 under the laws of Delaware for the purpose of conducting a general steamship excursion and sight-seeing business with executive offices at Pier 4, Main Avenue and M Streets, Southwest, and operations office at Post Office Box 277, Pensville, New Jersey.

Finances, on September 25, 1962, stated by Mrs. Wentworth, secretary to the president of the corporation that this was intended to be a parent corporation to the Wilson Line of New York, Inc., New York, New York to the Wilson Line of Pennsylvania, Inc., Philadelphia, Pennsylvania, and the Wilson Line of Maryland, Inc., Baltimore, Maryland; that because of a series of problems, including bad business, strikes, etcetera, the corporation ceased operations about September 1961; that all of the corporations are now dormant and practically dissolved except the Wilson Line of Washington, Inc. which is still active and is a separate corporation; that an attempt is being made to pay all creditors and to

stay away from bankruptcy; that the corporation is now dormant of no local credit or bank accounts.

Credit -- no record of accounts or suits.

Personnel -- President and principal stockholder is Joseph I. Goldstein, age about 40, married, resides at Cedar Beach Farm, Prince Frederick, Maryland.

Then I will discontinue reading certain personal things to do with Mr. Goldstein which I don't think are relevant.

Your Honor, I will rest with the reading of that document and the introduction of those.

THE COURT: Do you have anything further at this time?

MR. HENRY: No, except to ask the Court to consider the provisions of the New York statute which perhaps the Court can take judicial notice of.

THE COURT: You agree I may take notice?

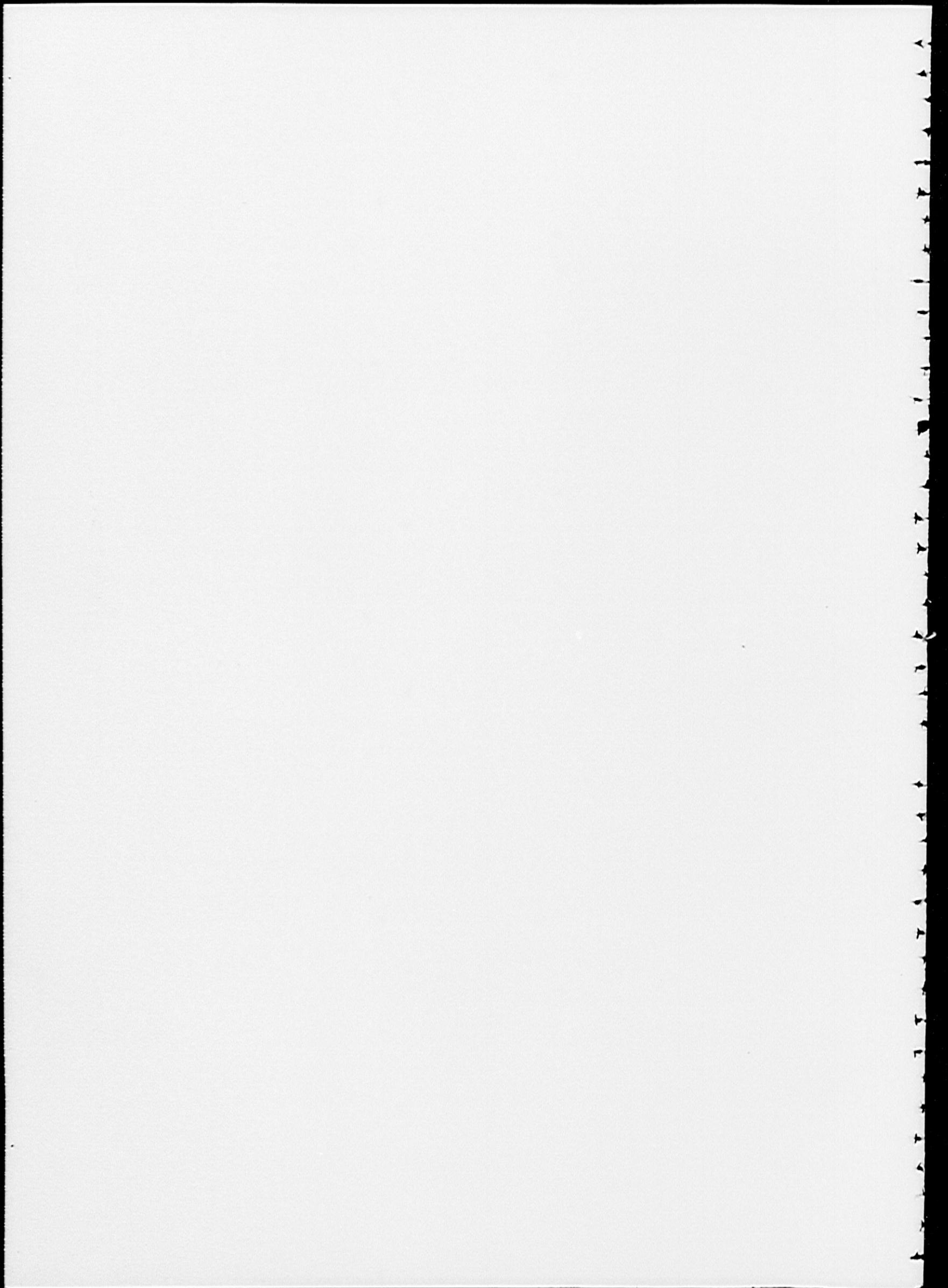
MR. BRYLAWSKI: Yes, Your Honor. I concur in that.

MR. HENRY: And Mr. Brylawski furnished you with what he says is the statute.

THE COURT: Yes.

Do you want to argue the matter now?

How long will it take you to argue?



MR. HENRY: I would like to have a sufficient time to really go over each and every one of these documents and all of his testimony.

THE COURT: Will it suit your convenience if I recess for lunch a little early and return at 1:45, and then you may have as much time as you gentlemen want.

Is this satisfactory?

MR. BRYLAWSKI: Very good, Your Honor.

MR. HENRY: Thank you, sir.

(Whereupon, at 12 noon, the above-entitled hearing recessed, to reconvene at 1:45 p.m. the same day.)

BRIEF FOR APPELLANT

IN THE

**UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA**

NO. 22, 279

MARIA T. PARDO

APPELLANT

VS

**WILSON LINE OF WASHINGTON, INC.
ET AL**

APPELLEES

**United States Court of Appeals
for the District of Columbia Circuit**

**HENRY H. BRYLAWSKI
224 East Capitol Street
Washington, D.C.**

FILED DEC 2 1968

Counsel for Appellant

Nathan J. Paulson
CLERK

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STATEMENT OF ISSUES FOR REVIEW

1. Did the Court below err in concluding that a judgment obtained in a foreign jurisdiction against an individual and a corporate defendant was, for jurisdictional reasons, not entitled to full faith and credit on the ground that defendants had never transacted any business in New York where the individual defendant had been the active President of an alleged corporation which was in business in the foreign jurisdiction but which did not have a true corporate existence and where the corporate defendant, a different corporation, was the creature and alter ego of the individual defendant?
2. In determining whether a judgment obtained in a foreign jurisdiction was entitled to full faith and credit can the Court decide questions which go to the facts upon which the judgment in the foreign jurisdiction was based?

(This case has not previously been before this Court)

STATEMENT OF THE CASE

This is an appeal from findings made and judgment entered by the United States District Court for the District of Columbia on July 8, 1968.

In Civil Action No. 211-66 filed on January 27, 1966, plaintiff (appellant) Maria T. Pardo sued defendants (appellees) Wilson Line of Washington, D.C., Inc., a corporation, and Joseph I. Goldstein, individually, on a judgment that she had obtained against both of them in the Supreme Court of New York on January 14, 1965. (See Complaint, APP. 2-3).

Defendants contested the validity of the New York judgment on jurisdictional grounds and after extensive pretrial proceedings the case went to trial on June 25, 1968. After trial the lower Court entered findings and judgment (APP. p. 9-11) in favor of defendants and this appeal followed.

The New York judgment, in the amount of \$17,049.20, was based on plaintiff's claim for damages from personal injuries sustained while she was a passenger on and resulting from negligence in the operation of the excursion vessel HUDSON BELLE on February 7, 1963, while being sailed in New York waters. The amended complaint upon which the New York judgment was based (See copy in EXH. p. 4-8) alleged that the HUDSON BELLE had been operated by a corporation known as Wilson Line of New York, Inc. at the time of plaintiff's injury; that the Wilson Line of New York, Inc. transferred the vessel to Wilson Steamship Corporation

while it was insolvent, and without a fair consideration and that subsequently the only assets of Wilson Line of New York and Wilson Steamship Corporation including the HUDSON BELLE were transferred to the defendants in this action which transfers were made without consideration and were fraudulent as to plaintiff and were made with the intent to hinder, delay and defraud creditors of Wilson Line of New York, Inc. or Wilson Steamship Corporation.

At trial in the Court below plaintiff offered as her only proof a certified copy of the judgment against defendants under triple certificate which judgment was admitted in evidence. (APP. p. 4-8).

The thrust of the defense was that the New York Court lacked jurisdiction over either defendant Wilson Line of Washington, Inc. and Joseph I. Goldstein individually. As stated previously, the finding of the Court was in favor of defendant.

ARGUMENT

THE NEW YORK COURT HAD JURISDICTION AGAINST BOTH JOSEPH I. GOLDSTEIN AND WILSON LINE OF WASHINGTON, D.C., INC. CONSEQUENTLY, ITS JUDGMENT WAS ENTITLED TO FULL FAITH AND CREDIT AND SHOULD HAVE BEEN ENFORCED BY THE LOWER COURT.

There is actually only one major basic question to be determined in this appeal and that is whether the New York Court had jurisdiction against defendants when it entered its judgment of January 14, 1965. If it had jurisdiction the New York judgment is enforceable. If it did not the judgment fails. There are no secondary issues.

This Court has held:

"It is fundamental that in an action on a judgment the original cause of action cannot be examined on the merits, the area of attack being limited to jurisdiction and fraud in procurement. Moreover, no item of defense may be asserted that existed prior to the judgment and which might have been set up in the original proceedings." Indemnity Insurance Co. of North America vs. Smoot, 80 U.S. App. D.C. 287, 152 F. 2d 667 (1945).

See also Hieston vs. National City Bank of Chicago, 51 App. D.C. 394, 280 F. 2d 525 (1922).

A judgment of record of another state has the same presumption of regularity as a domestic judgment and such presumption can be overthrown only by clear and convincing evidence of want of jurisdiction. Smith vs. Moore Mill & Lumber Co., Cal. (1929). 281 P. 1049.

Thus, the plaintiff by introducing into evidence a certified copy of the New York judgment made a *prima facie* case and the burden of proceeding further and overcoming the presumption thus created was shifted to the defendants. The following findings by the lower Court:

"2. Neither of the defendants in this proceeding, Wilson Line of Washington, Inc. and Joseph I. Goldstein, committed any of the acts alleged by Plaintiff Pardo in her amended complaint in that New York Court action and which allegations were the sole basis for the New York Court's entry of its money judgment in that action against these defendants.

"3. The principal claim of the plaintiff to the effect that these defendants obtained the vessel O.S. Hudson Belle from other defendants in that New York Court action without consideration and thereby committed fraud upon her as a judgment creditor, was not supported by any oral or written evidence, but, to the contrary, the defendant, Wilson Line of Washington, Inc., obtained clear title to said vessel in April, 1963, unencumbered by any liens following a U. S. Marshal's sale under order of the United States District Court for the District of Delaware and as consideration for its purchase of such vessel, paid the cash sum of \$180,000. and gave its promissory note for the balance of the purchase price, which obligation was secured by the delivery of preferred ship mortgages were duly recorded in the U. S. Customs House, Washington, D.C." (APP. p. 9-10)

were clearly in error since they were beyond the scope of inquiry in the case. These findings went to the facts in issue in the New York case and not to the question of validity or enforceability of the New York judgment.

It is essential to this appeal, therefore, that there be examined the question of the jurisdiction of the New York Court over the defendants. Plaintiff will consider this question as to each defendant individually.

I. THE COURT HAD JURISDICTION OVER
JOSEPH I. GOLDSTEIN.

The sole witness who appeared for the defendant and in fact the only testifying witness in the case was Joseph I. Goldstein. His entire testimony has been included in the Appendix. (APP. p. 24-3)

Mr. Goldstein testified that he had been President of Wilson Steamship Corporation, a corporation formed to own some excursion vessels operating in New York waters, one of which was the HUDSON BELLE (APP. p. 27); that he had been elected President of the corporation with the idea that if the "thing was successful" he would be "made" and would have an interest in the business. Wilson Steamship Corporation in turn set up some subsidiary corporations one of which was the Wilson Line of New York, Inc. (Others were Wilson Line of Boston, Wilson Line of Maryland and Wilson Line of Pennsylvania) These corporations were "operating companies" only and did not own any assets whatsoever. (APP. p. 27-28). He further testified that the Wilson Steamship Corporation owned the vessels (under circumstances to be described below) and leased them to the individual operating companies. (APP. p. 28). Mr. Goldstein had no investment in and owned no stock in either Wilson Steamship Corporation or Wilson Line of New York, Inc. although he was President of both corporations. (APP. p. 29 & 55) Although Mr. Goldstein did not normally make his headquarters in New York on at least one occasion he went to New York on the business of the two New York Corporations. (APP. p. 36).

Although Mr. Goldstein spoke of the vessel HUDSON BELLE as having been owned by Wilson Steamship Corporation it appears that no assets had ever actually been owned by either Wilson Steamship Corporation or Wilson Line of New York, Inc. through capital investment. When Wilson Steamship Corporation acquired the excursion vessels which included the HUDSON BELLE, it actually used no money derived from capitalization or investment of stockholders. It had borrowed a million dollars from a company known as ABC Vending Company and that money was used for the purchase of the vessel from even another "Wilson" corporation known as Wilson Line, Inc. (APP. p. 32-33 & 53-55).

All stock of the corporation was held in escrow by the companies which held liens on the vessels, that is, Wilson Line Inc., the previous owner, and ABC Vending Co., the lender. No cash investment whatsoever was put in the corporation for capitalization by anyone. (APP. 53-55).

The only money that Wilson Steamship Corporation had for operating use was part of the loan which was made to it by ABC Vending Company.

Wilson Line of New York, Inc., also had no capitalization and never had property. (APP. p. 55). "It was just a operating company." "It never really owned anything." No money was put into it by any person. Mr. Goldstein was President of the corporation but held no stock and had no definite knowledge of just how the corporation was organized. (He had no question in

his mind on this subject since he had no money invested and on this basis as he put it: "What did I care?") He acknowledged that at the time of the accident in which the plaintiff was injured Wilson Line of New York, Inc. had chartered the vessel **HUDSON BELLE** from Wilson Steamship Corporation. He claimed he was unaware of why there had been so many corporations organized for the purpose of operating excursion vessels stating "That was all done by the lawyers in Philadelphia." Although Mr. Goldstein testified that he was just a figure head, did not get paid and did not do anything in the way of corporation management as President of either corporations, he acknowledged writing a letter to his New York attorney with respect to the New York case which resulted in the judgment upon which the present suit is brought, stating in part:

"April 26, 1962

"Dear Mr. Dunham-

Your letter of April 23rd addressed to our general counsel, E. F. Henry, Esq., relating to the seven law suits wherein you have appeared for us, has been referred to our attention.

In the light of the current financial condition of our company, it is impractical to continue to pile up defense costs and unfair to expect you to continue to represent us without fee or reimbursement for costs.

Under the circumstances, you hereby are released from your engagement as counsel in the cases listed as follows:

George Lohbauer v. Wilson
Reynolds v. Wilson
Pardo v. Wilson
Moore v. Wilson
Wykle v. Wilson
Tolentino v. Wilson
Gerrogianis v. Wilson
* * * * * * * * * * * *
* * * * * * * * * * * *

Sincerely,

WILSON STEAMSHIP CORPORATION
WILSON LINE OF NEW YORK

By /s/ Joseph I. Goldstein
President.

This letter was written on the letterhead of Wilson Line of Washington, D.C., Inc. (EXH. p. 1) In explanation as to why that letter had been written by him when he professed no interest in the management of the corporation it appears (APP. p. 60-61) that no one else would take charge at that time so Mr. Goldstein acted. He reiterated (APP. p. 62) that Wilson Line of New York was just a "shell corporation", had no capitalization and that both Wilson Line of New York and Wilson Steamship Corporation "went out of business at the time of the fiasco." Earlier Mr. Goldstein had said that due to a maritime strike the Wilson Steamship Corporation and all its subsidiary companies "went by the wayside and were dissolved." Mr. Goldstein did not produce any books, records, minutes of meetings, stock record books, charter, statement of assets and liabilities, or any other indicia of corporate regularity whatsoever with respect to any of the corporations in question. The names of stockholders, directors, or other officers were not produced. Nor was any evidence of any kind otherwise produced by the defendants on this important subject. The only evidence or testimony presented by the defendants for the purpose of overcoming the presumption of regularity of the New York judgment was Mr. Goldstein's unadorned and undocumented testimony. The myriad of documents introduced by the defendants with respect to the documentation of the vessel HUDSON BELLE in no way attested to the corporate validity of any of the defendants in the New York case.

This omission or failure of proof takes on particular significance in light of the clear obligation of the defendants to overcome the plaintiff's prima facie case. As this Court has said:

"'The burden of undermining the verity' of the decree of a sister jurisdiction 'vests heavily upon the assailant'. In re Adoption of a Minor 94 US App. D.C. 131, 214 F 2d 844 (1954) (quoting from Williams v. North Carolina, 1945, 325 US 226 at page 233-234, 65 S. Ct. 1092 at page 1097, 89 L. Ed. 1577.)

From the defendants' evidence (as well as from the lack of it) it is apparent beyond question that both Wilson Steamship Corporation and Wilson Line of New York, Inc. were hollow and at best "paper" corporations which never at any time had any assets of their own, in which no one invested any money or contributed any property, and which merely served as a smoke screen behind which certain excursion vessels were operated by the persons or companies who actually owned them. When the operations of these so-called corporations became unprofitable, whether because of strikes or personal injuries for which the owners would be liable, the "corporations" were dissolved and evaporated into thin air leaving their creditors to grasp at just that (thin air) for relief. Under these circumstances the New York Courts have spoken as follows:

"Broadly speaking the Courts will disregard the corporate form, or, to use accepted terminology, 'pierce the corporate veil' whenever necessary to prevent fraud or achieve equity -- In other words whenever anyone uses control of a corporation to further his own rather than the corporation's business, he will be liable for the corporation's acts --- such liability moreover, extends not only to corporation's commercial dealings - but to its negligent acts as well."

Walkovsky vs. Carlton, 18 NY 2nd 414, 276 NYS 2d 585 (1966). See also Beol, Inc. vs. Dorf, 22 Misc. 2d 798, 193 NYS 2d 394 (1959) where improper acts by a President of a corporation were found to make him personally liable.

Also pertinent is § 504(n) Business Corporation Law, McKinney's Consolidated Laws of New York, which provides:

"Certificates of shares may not be issued until the full amount of consideration therefore has been paid ** (exceptions not pertinent)"

Since no consideration was ever paid in for issuance of shares in either of the New York corporations they may be held to be non-existent by reason of this statute alone.

The fact that a corporation is organized with an obviously inadequate capital set up may be considered in determining whether corporate entity should be disregarded. Carlesimo vs. Schwepel, 197 P. 2d 167 (Cal. 1948). The U. S. Court of Appeals for the District of Columbia has held on more than one occasion that the corporation form is not to be employed to work injustice.

In Francis O. Day Co. vs. Shapiro, 105 U. S. App. D.C. 392, 267 F 2d 669 (1959), this Court said (105 U.S. App. D.C. page 396):

"Realities, in short, and not mere forms must be considered by the courts, and inevitably under certain circumstances, the limited liability normally to be attached to the corporate form will be qualified. 'An obvious inadequacy of capital, measured by the nature and magnitude of the corporate undertaking, has frequently been an important factor in cases denying stockholders their defense of limited liability.' Anderson v. Abbott, 1944 321 US 349, 362, 64 S.Ct. 531, 538, 88 L.Ed. 793." (Underlining added.)

It is obvious that the judgments obtained against Wilson Steamship Corporation and Wilson Line of New York, Inc. were empty ones and the plaintiff, as she did in her amended complaint in New York, had the right to pierce the corporate veil in order to bring suit against the parties who were actually liable to her because of her injuries incurred on the vessel HUDSON BELLE.

Persons who assume to act as officers or agents of a purported corporation which in fact has no corporate existence are personally liable for breach of contract or tort. Claude Neon Lights, Inc. vs. American Neon Light Corp., 39 F 2d 548, 2nd Circ. (1930) See also Baker et al v. Bates Street Shirt Co., 6 F 2d 854 1st Circ. (1925), where the manager of a defectively organized corporation was held individually liable to creditors. See also Sulphur Export Corporation v. Caribbean Clipper Lines, Inc., 277 F. Supp. 632, La. (1968), which coincidentally also involved a charter vessel operation, where it was held that officers and directors of a corporation were personally liable in damages where the corporation had entered into a charter contract before the minimum capital (required by statute) had been paid in.

In the situation that existed, the person most available to plaintiff was the defendant Joseph I. Goldstein. He was the President of both Wilson Steamship Corporation and Wilson Line of New York, Inc.; he controlled the business of both corporations (witness his control of the defense to the lawsuit brought by plaintiff and others as described above; he is even now President of the corporation (Wilson Line of Washington, D.C., Inc.) which now

owns the HUDSON BELLE (now the George Washington) (APP. p. 25 & 35).

It appears, therefore, that the organizations which called themselves Wilson Steamship Corporation and Wilson Line of New York, Inc. were creatures of Mr. Goldstein and possibly others still unnamed. Since the so-called corporations undeniably transacted business in New York (i.e. operated excursion vessels out of New York City) it cannot be denied that defendant Joseph I. Goldstein transacted business in the State of New York and consequently was amenable to jurisdiction of the New York courts.

Where the privilege of transacting business in corporate form has been illegally abused to the injury of a third party, corporate entity should be disregarded. Green v. Equitable Powder Mfg. Co. 95 F. Supp. 127 U.S. Dist. Ct. Ark. (1951).

Although Mr. Goldstein was not a resident of New York, Section 302 of the Civil Practice Laws and Rules of the State of New York, as in effect on the date of the original suit by plaintiff, created jurisdiction against him in the following language:

"(a). Acts which are the basis of jurisdiction. A court may exercise personal judgment over any non-domiciliary, or his executors or administrators, as to a cause of action arising from any of the acts enumerated in this section in the same manner as if he were a domiciliary of the state, if, in person or through an agent, he:

1. Transacts any business within the state."

Thus, the New York court had jurisdiction over Mr. Goldstein and judgment should have been enforced against him.

II. THE COURT HAD JURISDICTION OVER
WILSON LINE OF WASHINGTON, D.C., INC.

This corporation is another creature of Mr. Goldstein. He is its President, sole owner, and sole stockholder. (APP. p. 64). By a series of transactions too difficult to even follow much less set forth in this brief, the very vessel upon which the plaintiff was injured, that is the HUDSON BELLE (now called the George Washington) at present plies the Potomac River under the flag of Mr. Goldstein's Wilson Line of Washington, D.C., Inc.

It is more than a coincidence that this so-called corporation, Wilson Line of Washington, D.C., Inc., another one of the very many "Wilson" pseudonyms (confusing even to him, See APP. p. 32) used by Mr. Goldstein and his associates, now owns the very vessel involved in the New York case. It is true that there were purported to be a series of transactions documented by official looking exhibits through which Wilson Line of Washington, D.C., Inc. obtained ownership of the vessel from the New York "corporations" but the Court is justified and even compelled to see beyond them. They obviously are merely a series of transfers and mortgages made for the specific purpose of preventing creditors from pursuing their remedies under Admiralty Law where the vessel itself can be sued. (The New York suit was not brought in Admiralty.) It should be emphasized that the owner of the vessel HUDSON BELLE at the time of the injury to plaintiff purported to be Wilson Steamship Corporation a purported corporation of which Mr. Goldstein was President; that

the operator of the vessel HUDSON BELLE at the time of her injury purported to be Wilson Line of New York, Inc., another purported corporation of which Mr. Goldstein was President; and that the owner of the vessel now is Wilson Line of Washington, D.C., Inc. of which Mr. Goldstein is President. The conclusion is inescapable that the Washington D.C. Wilson Corporation, like its New York Wilson brothers were merely pseudonyms of their "President" Joseph I. Goldstein.

CONCLUSION

Since the New York Court had jurisdiction over both Mr. Goldstein and Wilson Line of Washington, D.C., Inc. its judgment is entitled to full faith and credit and the judgment of the lower Court should be reversed with instructions to enter judgment for plaintiff in the full amount of her claim.

Respectfully submitted,

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543-2450

NO. 22,279

IN THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

MARIA T. PARDO

APPELLANT

VS.

WILSON LINE OF WASHINGTON, INC., ET AL.

APPELLEES

BRIEF FOR APPELLEES

United States Court of Appeals
for the District of Columbia Circuit

FILED JAN 24 1969

Nathan J. Paulson
CLERK

ERNEST F. HENRY,
1828 Jefferson Place, N. W.,
Washington, D. C. 20036

Counsel for Appellees

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<p>The "Long Arm" statute of New York State cannot reach non-domiciliaries such as defendants below, since they were not served personally within that state and they committed none of the acts which are the sole basis of jurisdiction under that statute. The invalidity of any foreign judgment for want of jurisdiction may be asserted at any time in any proceeding during which the judgment comes into issue. The conceded and uncontroverted facts offered to and found by the court below fully support and indeed compel that court's action in this case.</p>	
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1.

STATEMENT OF ISSUES FOR REVIEW

1. Is a foreign judgment subject to attack for lack of jurisdiction?
2. If so, did the lower court here properly entertain oral and documentary evidence on the question of the jurisdiction of the New York Court over the parties against whom enforcement of its judgment is attempted in this action?
3. Were the findings of fact supported by the evidence adduced at trial and were the resulting conclusions of law relevant and correctly applied?

(This case has not previously been before this Court)

STATEMENT OF THE CASE

Plaintiff Pardo (Appellant), after entering suit in New York for claimed personal injuries suffered while a passenger on a vessel Hudson Belle in New York waters (Exh. p. 4) recovered a default judgment against the original defendants in that action (App. p. 6) and then obtained permission of the New York court to add Joseph I. Goldstein and Wilson Line of Washington, Inc. (App. p. 5), the defendants below in this suit (appellees) as additional defendants in the New York action, claiming numerous acts of Goldstein and Wilson Line of Washington had brought these non-domiciliaries within the New York Court's jurisdiction under the provisions of the long arm statute of that state. The only basis for exercise of such jurisdiction was a statement of New York counsel for Pardo wherein he recited nothing on personal knowledge but upon information and belief he alleged acts amounting to fraud resulting in irreparable damage to his client Pardo in her attempts to locate and execute upon assets of the original defendants in the New York action. (Exh. pp. 3 to 13).

Neither Goldstein nor Wilson Line of Washington were served with process within the State of New York and neither entered an appearance or participated in any way in the New York proceedings and there was no trial on the merits in New York on the alleged acts on which jurisdiction there was based. (App. p. 9).

Appellant Pardo filed her action here solely on the foreign judgment thus obtained in New York and throughout these proceedings she has continued to rely solely upon the New York judgment. (Appellant's

Brief, p. 3). In sworn answers to written interrogatories Pardo admitted she had no personal knowledge of any of the acts alleged in her New York action and that the entire basis for such allegations was confined to the contents of four documents which she then identified. Each of these documents was produced and offered in evidence at trial by the defendants below (appellees) and were examined and admitted into evidence and are a part of the record. (App. pp. 66,67,68,69, 70,71). None supported Pardo's claims in the slightest degree. (App. pp. 9,10).

At trial appellant Pardo offered no oral or documentary evidence other than the New York judgment and neither she nor her New York counsel who had made the New York jurisdictional allegations appeared for direct or cross examination. (App. pp. 21,22).

Defendant Goldstein, for himself and on behalf of his co-defendant, Wilson Line of Washington, testified under oath. He identified the four documents referred to by Pardo and identified other documents relating thereto; and thereupon specifically denied each and every act relied upon by Pardo. (App. pp. 33,34,35). The trial court's findings of fact closely followed and summarized the evidence adduced by Goldstein's testimony and the admitted documents. (App. pp. 9,10). At the close of appellees' defense at trial, Plaintiff Pardo offered no rebuttal evidence. (Appellant's Brief, p. 3).

Thus, at the close of the trial below, the Plaintiff Pardo's New York judgment stood stripped of its jurisdictional basis against the Defendants Goldstein and Wilson Line of Washington, since, upon inquiry with opportunity for the truth to be developed, none of the essential elements

of the claimed New York jurisdiction was supported and all were, in fact, fully destroyed by the uncontradicted evidence offered by the defendants (appellees).

Accordingly, the lower court concluded as a matter of law that the New York judgment was not entitled to full faith and credit as to these appellees since that court lacked jurisdiction over them. (App. pp. 9,10). The Plaintiff Pardo appeals here from that decision.

ARGUMENTINVALIDITY OF A JUDGMENT FOR WANT OF JURISDICTION
MAY BE ASSERTED AT ANY TIME IN ANY PROCEEDING
DURING WHICH THE JUDGMENT COMES INTO ISSUE

This fundamental principle was early and well stated by the United States Supreme Court in *Thompson v. Whitman*, 85 U. S. 457, 21 L. Ed. 897. And in *Pennoyer v. Neff*, 95 U. S. 714, 24 L. Ed. 565, that Court stated that where the object of an action is to determine personal rights and obligations of defendants, constructive service upon a non-resident is ineffectual for any purpose. Here it is conceded that both appellees, Goldstein and Wilson Line of Washington, were and are non-domiciliaries of New York. The sole basis claimed for that state's jurisdiction over them is subsection 1 of Section 302(a) of the Civil Practice Laws and Rules of the State of New York, known as the long arm statute. Such a statute has narrow limits and the contact required to sustain such jurisdiction depends upon proof of sufficient contact to satisfy the constitutional strictures upon such reaching beyond the territorial borders of the state.

In *Hanson v. Denckla*, 78 S. Ct. 1228, 357 U. S. 235, 2 L. Ed. 2d 1283, the Supreme Court reviewed the trend toward expanding personal jurisdiction over non-residents through "long arm" statutes. It there said (357 U. S. - Page 251), as follows:

"But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the

personal jurisdiction of state courts. See *Vanderbilt v. Vanderbilt*, 354 U. S. 416, 418. Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective states. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that state that are a prerequisite to its exercise of power over him."

It logically and necessarily follows that the lower court here properly inquired into the jurisdictional question and entertained evidence relating thereto as did the court in *Hanson v. Denckla, supra*, pages 251, 252, and there found no such contact. See also the following cases for the propriety of judicial inquiry:

Milliken v. Meyer
61 S. Ct. 339, 311 U. S. 457,
85 L. Ed. 278;

Adam v. Saenger
58 S. Ct. 454, 303 U. S. 59,
82 L. Ed. 649;

Williams v. North Carolina
65 S. Ct. 1092, 325 U. S., 226, 229, 234,
89 L. Ed. 1577;

Here, the lower court's inquiry focused upon the facts alleged by Appellant Pardo in the New York action as giving that court jurisdiction over these particular defendants, Goldstein and Wilson Line of Washington. The court's findings clearly reflect such focus and its conclusions of law flow naturally from such facts and the constitutional principles involved. (App. pp. 9,10). For convenience, illustration and emphasis those findings and conclusions are herein set out, as follows:

FINDINGS OF FACT

1. Both defendants in this proceeding, Wilson Line of Washington, Inc. and Joseph I. Goldstein, are non-domiciliaries of the State of New York; neither ever has transacted any business in the State of New York; and neither ever appeared in the cause of action entitled Pardo v. Wilson Line of New York, et al., #13174/1962, filed in the Queens County Branch of the Supreme Court of the State of New York.

2. Neither of the defendants in this proceeding, Wilson Line of Washington, Inc. and Joseph I. Goldstein, committed any of the acts alleged by Plaintiff Pardo in her amended complaint in that New York Court action and which allegations were the sole basis for the New York Court's entry of its money judgment in that action against these defendants.

3. The principal claim of the plaintiff to the effect that these defendants obtained the vessel O.S. Hudson Belle from other defendants in that New York Court action without consideration and thereby committed fraud upon her as a judgment creditor, was not supported by any oral or written evidence, but, to the contrary, the defendant, Wilson Line of Washington, Inc., obtained clear title to said vessel in April, 1963, unencumbered by any liens following a U. S. Marshal's sale under order of the United States District Court for the District of Delaware and as consideration for its purchase of such vessel, paid the cash sum of \$180,000. and gave its promissory note for the balance of the purchase price, which obligation was secured by the delivery of preferred ship mortgages in the total amount of \$673,519.94 which mortgages were duly recorded in the U. S. Customs House, Washington, D. C.

CONCLUSIONS OF LAW

1. The money judgment obtained in the Supreme Court of the State of New York against the defendants, Wilson Line of Washington, Inc. and Joseph I. Goldstein, is not entitled to full faith and credit since that court never secured effective jurisdiction over such defendants as required by due process of law.

2. The presumption of regularity of a judgment entered in a foreign jurisdiction applied to this case was effectively overcome by uncontradicted evidence on behalf of the defendants and plaintiff failed to carry her burden of proof, lacking such presumption.

3. The said money judgment is null and void and defendants are entitled to a finding and judgment to that effect.

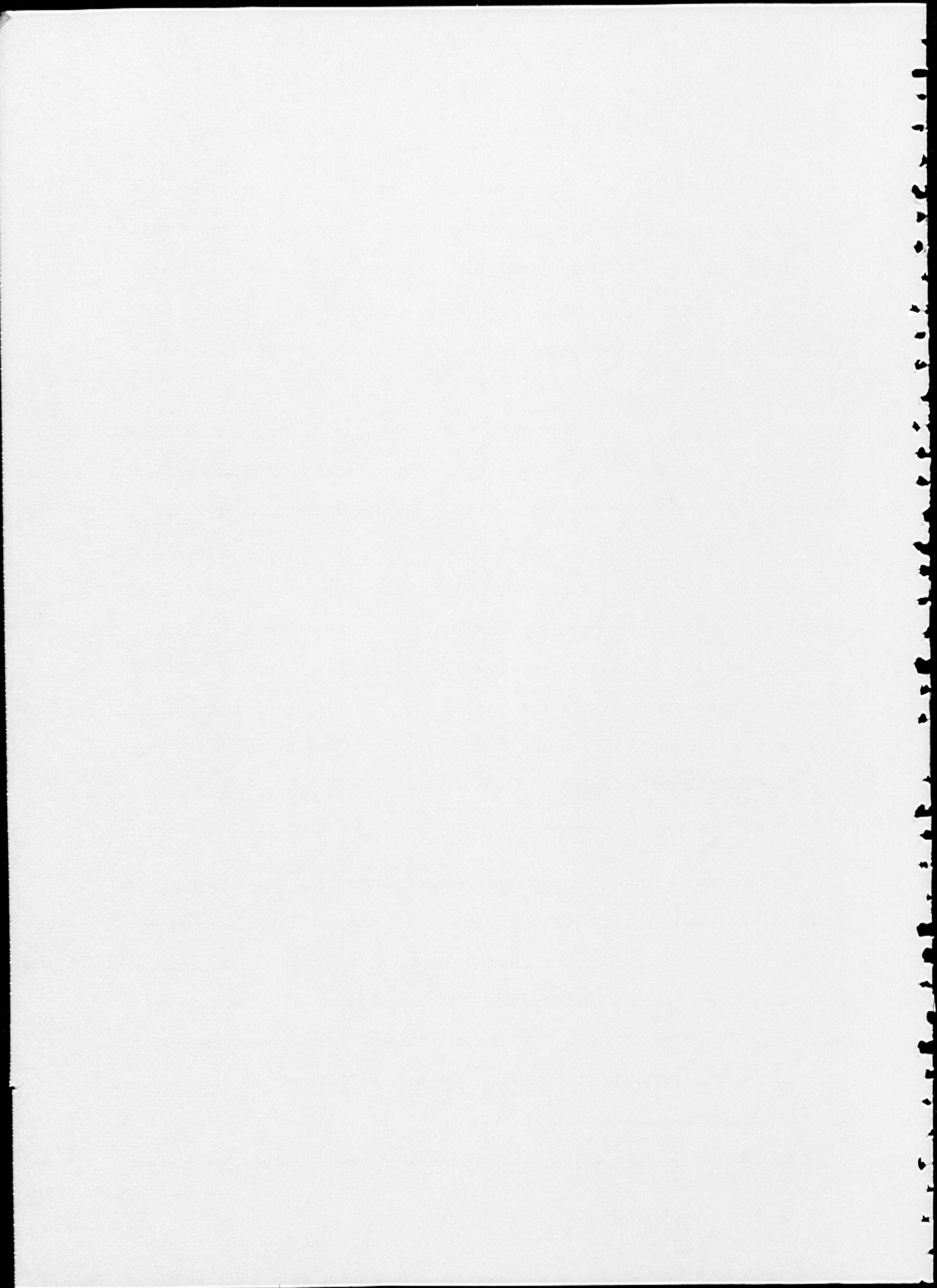
And the foregoing findings of fact are amply supported by the record evidence adduced at trial in this jurisdiction as contrasted with

no trial on the merits of the jurisdictional issue in the New York Court. Appellee Goldstein's sworn testimony (App. pp. 24 through 58) and Appellees 7 exhibits (Exh. pp. 15 through 60) include interrogation of the witness as to all of the alleged acts and his sworn denial of such acts and his identification of all such exhibits and the accuracy of their contents as fully supporting his testimony. It bears repeating here that the Plaintiff below (Appellant Pardo) did not personally appear, nor did her New York attorney do so and no oral testimony of any kind was offered in her behalf, either to impeach or modify the Goldstein testimony, or to support the unverified allegations in her New York action. (Appellant's Brief, p. 3) (App. pp. 21, 22). Thus, the court below was provided with uncontradicted oral testimony supported by documentary evidence clearly refuting the claimed basis for assumption of jurisdiction by the New York Court over non-domiciliaries of that state. This state of the record left no room for reviewable error as to the facts found by the trial court.

Rule 52(a) Federal Rules of Civil Procedure - 28 U.S.C.A.
U. S. v. U. S. Gypsum Co.
68 S. Ct. 525, 333 U. S. 364,
92 L. Ed. 746.

In an attempt to divert this Court's attention from the facts as found by the lower court, Appellant, in pages 6 through 15 of her brief, alludes to record testimony taken out of context and seeks to have this court accept her partial text blended with her argumentative version or interpretation of such bits and pieces of explanatory testimony removed from their full text. In this attempt she must fail since the fact finding function is for the trial court.

Of the 14 case opinions cited by Appellant in support of her

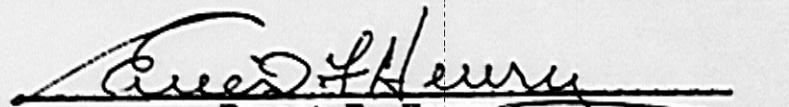


appeal, 9 do not directly touch upon the jurisdictional question and all of the 5 which discuss the question recognize the constitutional principle preserving the right of inquiry as to the basis of jurisdiction by way of collateral attack. Consequently, there appears to be no sound reason for detailed analysis of them herein. And Appellant cites no court decisions involving the specific provisions of the New York long arm statute. Thus, Appellant's brief is devoid of citations of authorities which might conceivably challenge the applicability of the authorities cited in this brief for the Appellees. The reason for this perhaps is obvious. There are none.

CONCLUSION

The judgment entered below should be affirmed as it simply implements the correct conclusions of law reached by the trial court based upon findings of fact abundantly supported by uncontradicted evidence showing clearly that the minimal contact required for due process was lacking in the New York action against the defendants (Appellees) in this action.

Respectfully submitted,


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